

AN
EXAMINATION

Of the SCHEME of

HURCH-POWER,

Laid down in the

CODEX JURIS ECCLESIASTICI
ANGLICANI, &c.

The SECOND EDITION, Corrected.



L O N D O N :

Printed J. ROBERTS, near the Oxford Arms in
Warwick Lane. M,DCC,XXXV.

THE
NOTICE
OF
THE
SCHOOL
BOARD
OF
THE
CITY
OF
NEW
YORK
IN
RELATION
TO
THE
SCHOOL
YEAR
1890-1891

The Reader is desired to correct the following *Errors*.

Page 19. Line 9. dele *yet*.

Page 28. Line 22. for *Commissioners*, read *Commissions*.

Page 31. Line 25. for *Ecclesiasticæ*, read *Ecclesiastics*.

Page 47. Line 15. in *Prohibitings* dele *s*.

Page 81. Line 12. *and amongst them*, read *and some of them inscribed to*.

Page 116. Line 16. for *as Causes Matrimonial*, read *as also Causes Matrimonial*.

Page 149. Line 35. read *some time*.

Page 153. Line 7. for *verosimiliter* read *vero similiter*.

Page 154. Line 15, 16. for *were indisputable, and were*, read *was indisputable, and they were*.

Page 156. Line 11. after *lessened*, insert *they*.

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The Reader is desired to correct the fol-
lowing Errors.

Page 10. Line 9. delete.
Page 11. Line 1. for Comprehension, read Com-
prehension.
Page 12. Line 1. for Satisfaction, read Satisfac-
tion.
Page 13. Line 1. for Propositions, delete.
Page 14. Line 1. and amongst them, read and
amongst them.
Page 15. Line 1. for as Cause, delete.
Page 16. Line 1. for as Cause, delete.
Page 17. Line 1. for as Cause, delete.
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A N
EXAMINATION

OF THE

Scheme of Church-Power,

Laid down in the

CODEX JURIS ECCLESIASTICI
ANGLICANI, &c.

WHEN our blessed Saviour was questioned by *Pilate*, concerning a Kingdom he was charged to have aspired after; in Opposition to the Government under which he lived, he confessed that he came into the World in order to set up a Kingdom *in it*: But he at the same Time, satisfy'd the *Roman* Governor, that *his* Kingdom could give no reasonable Ground of Jealousy to *Cæsar*: *For it would not interfere with any of Cæsar's Rights.* It was not a Kingdom of *this* World: It was the Empire of Truth and Righteousness in the Hearts of his faithful Subjects; whose Obedience he intended to reward in his Kingdom, in the future invisible State. *Pilate* appears to have been satisfy'd with our Lord's Account of the Matter; and accordingly acquitted him of the Charge of Sedition.

B

But

But if we were to judge of the Sentiments of some, who affect to be called the principal Subjects of this Kingdom, *from their Conduct*, we should be tempted to suspect, either that they imagine our Lord did not fully understand the Nature and Intend of his own Kingdom, or that he did not give the *Roman* Governor a fair Account of it. For it is notorious, that a certain Set of Men, most impudently assuming to themselves the sole Interpretation of the Laws of this Kingdom, and pretending to an extraordinary Zeal for the Honour of its Founder, did set up, and for many Ages maintain, a Kingdom of *their own*, over the greatest Part of the Christian World: The most impious and oppressive Tyranny that ever exercised the Patience of God or Man: An Empire founded in Craft, and supported by Blood, Rapine, Breach of Faith, and every other Engine of Fraud and Oppression.

It doth not suit my present Purpose to enter into an Historical Account of the Steps by which this Empire arose: Tho' my Design naturally leadeth me to mention some of the Principles and Claims on which it was founded. And these were, *That Jesus Christ invested the Ministers of his Word, with certain exclusive Powers for preserving Order and Decency in Worship; and for suppressing all Enormities in Life, and Errors in Matters of Faith.* That the Magistrate

Magistrate ought not to interfere with the Clergy in the Exercise of these Powers; but ought, on all Occasions, to be assisting to them, whenever his Aid is required. That the Clergy ought to be permitted to make such Constitutions from Time to Time, as shall appear to them conducive to the Ends of their divine Commission. And that the Power of interpreting those Constitutions, and of carrying them into Execution, ought to be vested in the Clergy alone; or in those only to whom they shall delegate it.

Upon these Principles and Claims; among others, was the *Roman* Hierarchy built: And if I am not mistaken, the same Principles and Claims, admitted in their utmost Latitude, and in all their Consequences, will at all Times be sufficient, under a crafty Management, to establish, not an Empire within an Empire, (a Monster in Government which never did or can exist,) but a *Sacerdotal* Empire, which will infallibly draw all Power to itself, and render the Civil Magistrate its Minister and Dependent. For this Reason I do not think it unbecoming any Man to bear his Testimony against those Principles and Claims, whenever they make their Appearance in the World; especially when Authors of high Distinction make themselves answerable for them.

This must be my Excuse, if I shall be thought to need any, for spending a few

See the Bi-
shop of Lich-
field and Co-
ventry's
Charge to
his Clergy.
Ann. 1734.
p. 35.

Dr. Grey.

of my leisure Hours, in examining some of the leading Principles of the Bishop of London's CODEX JURIS ECCLESIASTICI ANGLICANI, &c. This Book hath been lately recommended to the perusal of the Clergy, in a very publick and solemn Manner; as *the best Book that hath been written on the Subject it treats, since the Reformation: As a Work eminently serviceable to the Church of England; A Work which must ever be consider'd as a STANDARD by all competent Judges.* And if common Report may be depended on, the Gentleman, who hath been at the Pains of *retailing* out the *Codex*, by way of Question and Answer, for the Use of the young Students in our Universities, hath received peculiar Marks of Favour and Approbation from those learned Bodies. If this be so, I doubt I have undertaken a Work for which I am not to expect the like Honours. However, if it shall appear that his Lordship's Principles are false in Theory; inconsistent with our excellent Constitution, and dangerous to it; I flatter my self I shall not be thought guilty of great Presumption, though any of the Fathers of our Church, or even the two Universities, should be thought to have adopted his Lordship's Mistakes.

When the Clergy found themselves in Circumstances to set up for an Independency on the State, they coined a Distinction unheard of in the earliest Ages of Christianity,
between

between the spiritual and temporal Jurisdictions, as exercised by different Persons, and flowing from different Principles. One exercised by the Clergy alone, by virtue of the divine, the other by the Laity, by virtue of human Laws. This Distinction of the two Jurisdictions, in Point of Original, they saw to be of absolute Necessity for supporting their Claim of Independency: For a Jurisdiction, grounded wholly on human Laws, and yet independent on human Power, was an Absurdity which the Ignorance and Credulity of the People, great as it was, could not digest. But on the other Hand, if it be admitted that the Clergy have a divine Right to any Jurisdiction at all; they must, while they keep within the Compass of their divine Commission, be independent of all human Authority. This I think is self-evident: On which Account I find it extremely difficult to reconcile the Powers his Lordship ascribes to the Bishops of our Church, *as grounded on the Word of God*, with the Regal Supremacy; which was the leading Principle of the Reformation, and hath been lately stil'd the GROUNDWORK of it.

Bishop of L.
and C.
Charge p. 47.

“ The Power, saith his Lordship, which
“ is vested in the Bishops for the due Ad-
“ ministration of Government and Disci-
“ pline in the Church of *England*, APPEARS
“ *by the Form of Consecration*, to have a
“ twofold Original, from the Word of
B 3 “ God,

P. 13.

" God, and from the Laws of the Land."

" The Office of Consecration WARRANTS

" every Bishop to claim Authority *by the*

" *Word of God*, for the correcting and

" punishing of such as be unquiet, disobe-

" dient and criminous, (*i. e.*) for the Ex-

" ercise of ALL MANNER of spiritual Dif-

" cipline, in his Diocess. " I cannot con-

ceive how it *appears* from the Form of

Consecration, that any Powers are vested

in our Bishops, by the Word of God; or

how that Form *warrants* our Bishops to

claim Authority by the Word of God. Be-

cause, whether any Claim be warranted by

the Word of God, or no, must be deter-

mined by the Word of God, and by nothing

else. I have looked over my Bible with

some Attention, and do not find any of the

Powers his Lordship speaks of, vested in

the Episcopal Order, exclusive of the Church,

or Body of Believers. I have likewise con-

sulted some learned Men, who have made

these Matters their Study; and they tell me,

that none of the Bishops of the first three

hundred Years after Christ, claimed any se-

parate exclusive Powers for the Exercise of

Church Discipline, but left those Matters to

the Provincial and Diocesan Consistories:

which, in the purer Ages of the Church,

were composed of *Bishops, Clergy and*

Laiety. The Advocates for the Independ-

ency of the Clergy have, in support of

that Claim, generally appealed to Passages

of

Fath. Paul's
Coun. of
Trent. l. 4.
f. 311, 312.
Treatise of
beneficiary
Matters. Fo-
lio Edition.
p. 19, 20.
Doctrine,
Discipline
and Consti-
tution of the
Primitive
Church.
Edit. 1712.
p. 113. 130.
141.

of Scripture relating to the Apostolical Authority, and have grounded the *jus divinum* on *them*. But I confess, I never before met with an Attempt to ground a divine Commission on the Office of Consecration, or on Acts of Parliament.

I must, however, do his Lordship the Justice to say; that in other Places he speaks of the Form of Consecration, "As a *Re-* P. 17.
cognition of a Right in our Bishops to
 "exercise Discipline on the Foot of divine,
 "as well as human Authority; — as an *U.*
 "Acknowledgment of a Power annex'd to
 "the Office by divine Right; — a *Recog-* c. 969.
nition of the spiritual Power of the
 "Church, by the Laws of Christ." And
 that he declares, "He considers the Distinc- P. 17.
 "tion between the divine and human Au-
 "thority of our Bishops, *only in a legal*
 "Sense." But how can it, with any Pro-
 priety be said, that the Powers vested in
 our Bishops APPEAR to have a two-fold
 Original, if no more is meant, than that
 they are so recogniz'd by Law; or that the
 Distinction is true in a legal Sense? His Lord-
 ship is sensible that a divine Commission,
 derived solely from human Authority, is
 an Absurdity which will not pass upon the
 World: And is not a divine Right in a
legal Sense, a divine Right warranted by a
 parliamentary *Recognition alone*, the same
 Absurdity expressed in different Terms? For
 if the Powers, with which his Lordship
 B 4 arms

arms our Bishops, are not to be met with in Scripture, (and he hath not attempted to shew they are) it will follow, that those Powers are merely human, whether they are to be found in our Laws, by way of *original Grant*, or by way of *Recognition*. The Distinction between a Grant and a Recognition, in this case, is merely verbal; unless the Right, which is supposed to be recogniz'd, can be proved to have taken place antecedent to that Recognition; which, I say, his Lordship hath not attempted to shew. And yet, he afterwards says, that

P. 18. " Having CLEAR'D *the divine Right* of the
 " Church, to the Exercise of spiritual Dis-
 " cipline, and so taken off the Reproach of
 " the Church's being a mere Creature of
 " the State, he will proceed to consider
 " the Administration of ecclesiastical Mat-
 " ters, &c. " How hath his Lordship *clear'd*
 the divine Right of the Church? By Arguments drawn from Scripture? No. And doth his Lordship conceive, that a divine Right, in a Matter of positive Institution, is to be *cleared*, (*i. e. clearly proved*,) any other way? Again, (His Lordship acknowledgeth himself to be one of those, who

P. 20. " assert a Right of Jurisdiction in the Church
 " *on a spiritual Foot.* " Is this Right asserted by his Lordship in a *scriptural*, or

P. 17. in a *legal* Sense? In a legal Sense. For " in
 " that Sense *only* he considers the Distinc-
 " tion between the divine and human Au-
 " thority

“thority of our Bishops.” And is the legal Sense, or *Construction of Law*, the *Spiritual* foot, on which this Right of Jurisdiction is asserted? His Lordship saw it was necessary to set out on the Foot of a divine Right; a Power of Correction and Discipline grounded, or supposed to be grounded, on the Word of God. And, perhaps, his Zeal for that Principle might lead him to express himself in stronger Terms, than upon second Thoughts he will allow himself to use. For if, in the Passages I have cited, no more is intended than “That the supposing a Jurisdiction in P. 17.
“the Church, by divine Right, is not inconsistent with the Principles of the Reformation; or that our Constitution acknowledges a Power of Correction and Discipline to be vested in the Bishops, by the Word of God.” I say, if this be all is intended, it must be acknowledged his Lordship is very unhappy in the Choice of his Expressions. I fear many of his Readers have been tempted to carry their Notions of the divine Right much higher; and have pleased themselves with an Imagination, that they have his Lordship’s Authority on their Side.

But since his Lordship is pleased to say, that he considers the Question only in a *legal Sense*, I must attend him in his own way: And, if I am not mistaken, it will appear, that the Powers he ascribes to our Bishops,

- Bishops, as *recognized by Law*, are inconsistent with our Constitution, and have no Manner of Foundation, even in the Form of Consecration; the only Authority to which he appeals on this Head. His Lordship says, that "every Bishop is warranted, " by the Form of Consecration, to claim " Authority by the Word of God, to exercise ALL MANNER of spiritual Discipline within his Diocess." Again, "No " Administration, that is properly spiritual, " can come into any Hands whatever, " otherwise than by the voluntary Choice " and express Act of the Bishop himself." Hath every Bishop a Right to exercise spiritual Discipline within (*i. e. throughout*) his Diocess? How will his Lordship, on this Principle, account for the many *Exemptions* from all Manner of Episcopal Jurisdiction which are still allowed among us; or for the Jurisdiction of *Archdeacons, Deans, &c.* in their *Peculiars*? As to the latter, his Lordship says, that "To the great Blemish " of our Reformed Church, they exercise " Episcopal Jurisdiction of all Kinds, *Independent from the Bishops.*" Can no Administration, that is *properly spiritual*, come into any Hands whatever, otherwise than by the voluntary Choice and express Act of the Bishop? His Lordship hath answered that Question against himself, in the Case of the *Peculiars*. But farther, doth the Court of *Delegates* derive its Authority from
- P. 18.
- P. 25.
- P. 22.
- 3

from the Choice or Concurrence of the Bishop? No. And are Matters cognizable there, properly of a spiritual Nature? Yes. In his Lordship's Judgment they are *more properly* so than any others. For "Mat-P. 21.
 "ters carried from the spiritual Judges into
 "that Court (the Court of *Delegates*) are
 "not only of an Ecclesiastical Nature—
 "but are more MERELY and undeniably so
 "than any others; *being purged from all*
 "*temporal Matter before they arrive there.*

I confess it passeth my Skill to reconcile these things: The Passages I have cited appear to me as so many Self-contradictions. I hope his Lordship will be so good, as to help me and the rest of his Readers through this, and many other Difficulties of the like Kind, we are likely to meet with as we go forward. But this by the Way.

His Lordship conceives it a Reproach thrown on our Church by its Enemies, to suppose it *a mere Creature of the State*; P. 13. and seems to think that what he hath offer'd with regard to the Right of our Bishops to exercise spiritual Discipline, on the Foot of the divine Law, hath effectually taken off that Reproach. So that in his Lordship's Sense of Things, the Reproach lies in supposing the *Jurisdiction exercised by our Bishops* in spiritual Matters, to be a mere Creature of the State; otherwise nothing he hath said *touching that Jurisdiction*

tion can any ways affect the Case. And yet, if his Lordship will permit his Readers to draw a plain Consequence from his own Premises, I fear the Reproach, if it be one, will continue where it did, before his Lordship undertook to remove it. His Lordship acknowledges, " That the Exercise and
 P. 17, 18. " Administration of Justice and Discipline
 " in such Courts, and in such Ways and
 " Methods, as are by Law and Custom esta-
 " blished in this Realm, *is derived from the*
 " *Crown.*" In another Place he calls the
 C. 969. Ecclesiastical Judges "*The King's Ministers*
 " *in foro exteriori*— for such Causes and
 " Matters as *are committed* to their Cogni-
 " zance by the Laws of the Realm. This
 P. 17. delegated Power his Lordship calls the
legal Power of our Bishops ; their Jurisdic-
 tion *in foro exteriori*; and the *external*
 Exercise of Discipline, in Contradistinction
 to *that other Authority* he supposeth to be-
 long to them by the Word of God. But
 if this legal, external Jurisdiction, derived,
 as his Lordship admits, from the Crown,
 be all the Jurisdiction in Spirituals which
 our Bishops do, or can rightfully exercise, it
 will follow, that all the Power of our Bi-
 shops for Correction and Discipline, is the
 Creature of the State. The Distinction his
 Lordship aims at between the legal, dele-
 gated, external Power of our Bishops, and
 their other divine Authority in Matters of
 Correction and Discipline, is vain ; unless it
 can

can be shewn that their supposed *divine* Authority can, or ought to be exercised, in such manner as to distinguish it from their *Legal* Authority; that is, *in any other Way, or by any other Methods, than those which have been established by Law or Custom.* For Authority, which neither can or ought to be exercised, is but the Name without the Thing. Perhaps his Lordship may say, that Law and Custom in this Case co-operate with the *divine* Law; so as to regulate and assist the Bishop in the Exercise of those Powers, which he derives, not from Law or Custom, but from the Word of God. But with great Submission, his Lordship ought not to say so, till he hath proved that any of the Powers of Correction and Discipline which are exercised by our Bishops (or rather in the Ecclesiastical Courts) are derived to them from the Word of God: Which, as I before observed, he hath not attempted to do.

I take the Case, with regard to Ecclesiastical Jurisdiction, to have been thus: When Christianity became the publick Religion of the Empire, the Laiety, who in the earlier Ages bore a part in the *Provincial* and *Dio-cesan Consistory*, finding themselves at Ease from Persecution, began to apply with more Attention to their secular Affairs, and left Church Matters to the Bishop and his Clergy; the Clergy being, for the most Part, settled at their respective Cures, at too great

great a Distance from the Mother Church to admit of a constant Attendance at the *Diocesan Consistory*; or perhaps from the high Opinion of the Wisdom and Integrity of their President, were contented to leave the principal Weight of Church Government in *his* Hands; especially when they looked on it as a barren Point of Preheminence, attended with no Profit or Distinction to compensate the Burden it brought with it. I believe it will appear upon Enquiry, that Episcopal Jurisdiction had originally no better a Foundation than what I have mentioned. But the first Christian Emperors, finding the Bishops in Possession of a *nominal* Authority, invested them with a *real* Jurisdiction: Which by the Concessions of succeeding Princes, increased till the Bishops came to have Cognizance, not only of such Matters as now make the proper Business of the Ecclesiastical Courts, but of many others, which the Wisdom of later times hath restored to the Civil Jurisdiction.

Stat. of Provisors, 25.

E. 3.

Preamble to the Act for depriving the Bishops of Salisbury and Worcester. Burnet's Hist. Ref. Edit. 1715.

Vol. I. among the Collection of Records f. 114.

As to the Church of *England*, If I may be permitted to speak of it in the Language of our Laws, "IT WAS FOUNDED IN THE ESTATE OF PRELACY by his Majesty's Progenitors, Kings of *England*, and the Earls, Barons, and other Nobles of the Realm." Accordingly Episcopal Jurisdiction in *England*, extended originally to such Persons, Places and Things, as our Kings

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Kings and their great Councils from Time to Time subjected to it, and to no other. The many Cases mentioned by our Lawyers and Historians, where the Legislature exempted Places and Persons from Episcopal Jurisdiction, or granted that Jurisdiction to Ecclesiasticks under the Degree of Bishops, sufficiently intimate to us, that Episcopal Jurisdiction was esteemed a Branch of Power, which the Legislature might confer, abridge, or wholly take away at Pleasure. Instances of this Kind were frequent in the Time of our *Saxon* Ancestors: And indeed the Authority of the *English* Bishops before the Conquest, as exercised in their Synods and Visitations, seems to have been carry'd very little farther than to a Power of Correction and Discipline over their own Clergy; who originally liv'd with the Bishop at the Mother Church, as Members of that College or Society of which *He* was the Head. For till the Conquest (if not considerably later) Matters which have since come under Ecclesiastical Cognizance, were heard and determined in Common with other Suits in the County Court, called the *Sheriff's Tourn*; where the Bishop and Earl, or in his Absence the Sheriff, sat together. The Hundred Court likewise had this mixt Jurisdiction, and was held before the Lord of the Hundred and Ecclesiastical Judge. And the Proceedings in those Courts, as well with regard to Matters, supposed

supposed now to be of *spiritual* Cognizance, as to those called *civil*, were not according to the Course afterwards introduced with the Practice of the Canon Law, but in the *English* Method of Juries. And, by the Way, if our Ancestors had been as tenacious of their Birthright (I mean the Trial by Juries) in Cases where the Clergy were concerned in Interest or Affection, as they have been where the Crown is party to the Suit, it would not have been possible for the Ecclesiasticks to have trampled on the Necks of Princes and People, in the Manner they did for some Ages after the Conquest.

P. 23.

While our Civil Courts had this mixt Jurisdiction, the Episcopal Authority must have been confined to very narrow Bounds; and I believe did not exceed the Limits before mentioned. His Lordship indeed says, " That though the Bishop sat in the same Court with the Sheriff to hear and determine such Causes as belonged to Ecclesiastical Cognizance; yet the Correction of Manners and Punishment of Vice *was not transacted there*, but in Visitations, Synods, and rural Chapters; and, as Occasion required, by special Commissions from the Bishop." His Lordship hath elsewhere advanced a Doctrine, which will deserve some Animadversion; namely, that the Correction of Manners and Punishment of Vice is the proper Work of the Clergy, and most likely to prosper in their Hands.

P. 30, 31.

Hands. It would in some Measure weaken that Principle, if it should be admitted that the Correction of Manners was, for many Ages together, part of the Business of the *Civil Courts*: And for this Reason, probably, his Lordship is unwilling to admit it to have been so. But if such Causes, as belong'd to *Ecclesiastical Cognizance*, were heard and determined in those Courts; and, especially, if as his Lordship admits, in another Place, " The Court for ecclesiastical and c. 1042,

" temporal Matters was ONE AND THE SAME;
 " namely, the County Court, where the
 " Bishop and Sheriff, or their Represen-
 " tatives, sat jointly for the Administration
 " of Justice, the first in Matters Ecclesia-
 " stical by the Laws of the Church, the se-
 " cond in Matters Temporal by the Laws
 " of the State:" If this, I say, be admitted, methinks there should be no great Difficulty in acknowledging, that the Correction of Manners, and Punishment of Vice, was likewise transacted in those Courts: since, however the Clergy may be esteemed peculiarly qualified for that Work, yet it must come under the Notion either of an ecclesiastical or temporal Concern; and the Court for both was one and the same. But whether his Lordship will, or will not admit it, the Case was certainly so; since Fornication and Adultery, with all Acts of Lewdness tending to those Crimes, Incest and other Offences of the like Nature,
 C which

which afterwards came to be called *Spiritual Crimes*, were, by the *Saxon Laws*, punished by heavy Fines, or in many Cases by corporal Punishments; even to the Loss of the Member supposed to have been principally instrumental in the Offence: Punishments which Ecclesiasticks could never inflict. And consequently those Laws must have been carried into Execution in the Civil Courts, or not at all.

His Lordship admits, that the Bishop and Sheriff sat *jointly* for the Administration of Justice. But if I do not mistake his Meaning, he intimates that they *acted separately*, and conducted themselves by different Laws; the first in Matters Ecclesiastical, by the Laws of the Church; the second in Matters Temporal, by the Laws of the State. But this I think is a great Mistake; for if the Bishop and Sheriff acted separately, and by different Rules, what Occasion was there of their sitting together? Or how can it, with any Propriety, be said, that they sat (*i. e. presided*) *jointly*? If their Jurisdictions were separate, and the Law they went by different, their meeting in the same Place could have no other Effect than to breed Confusion. Besides, to omit other Authorities, the Charter of *William the Conqueror*, from whence his Lordship, and most Writers, date the Separation of the Civil and Ecclesiastical Courts, plainly shews that all Causes, cognizable in the Tourn or Hundred Court, were,

were, before that Separation, decided by the same Rule, the *Common Law*, in Contradistinction to the *Canon*. It directs that Ecclesiastical Causes shall *no longer* be cognizable by secular Judges, but in such Places as the Bishop shall appoint; where the Proceeding shall be, *not according to the Common, but according to the Episcopal Law*. From hence, I say, it appears to me, that Matters, wherein this Charter is supposed to have given the Bishop a separate Jurisdiction, were, before that Separation, cognizable in common with other Causes, in the Civil Courts, according to the Course of the Common Law. I believe the Mistake hath arisen from some modern Translations of the Laws of *Edgar* and *Canute*. which treat of the County Court. *Episcopus & Senator intersunto, quorum alter jura divina, alter jura humana, populum edoceto. — Adfint Loci Episcopus & Aldermannus doceatque alter jus divinum, alter seculare.* But with great Submission to the Authors who follow this Translation, I think the old one, which is follow'd by Mr. *Selden*, comes much nearer to the Original; and better suits the Notion of a Court, allowed on all Hands, to have a Jurisdiction in Causes Ecclesiastical as well as Civil. The original *Saxon*, with *Brompton's* Translation, runs thus,

Non amplius.

Non secundum Husedret.

Lamb. LL.
Edgari c. 5.
Canuti c. 17.Spelm. Gloss.
v. Gemotum.

Brompton.

Notæ in Eadmer. ad p. 6.
l. 28.

And thaer beo Biscoop and se
Interfit Præsul Comitatus &
C 2 Alder=

Alderman and thær * ægther tæcon
Aldermannus & *utrique doceant*
 ge Godes Riht ge Weoroldes Riht.

Dei Rectum & *Seculi.*

Dr. Wilkins
 in his Leges
 Anglo. Sax.

LL. Edgari
 c. 5.

LL. Canuti
 c. 17.

A late Translator of these Laws agrees in Substance with *Brompton*; tho', I confess, I do not perfectly understand them in his Translation. *Interfit Episcopus & Senator & POSTEA doceant tam divinum jus, quam humanum.*—*Interfit Episcopus & Senator & ibi UBIQUE doceatur tam jus divinum quam humanum.*

The Separation of the Ecclesiastical from the Civil Courts, which is supposed to have been effected by the Charter of *William the First*, was not compleated so as to give the former an *exclusive* Jurisdiction in Ecclesiastical Causes, till many Years afterwards. It required Time and Address, with a favourable Conjunction of Circumstances, to effect so great a Change in the Constitution, to the Prejudice of the Civil Power. It is difficult, indeed, precisely to ascertain the Period when this happened: But if I may be allow'd to offer a Conjecture of my own in the Case, I should fix it to King *Stephen's* Reign. From whence also we are to date the many Abuses of Ecclesiastical Power, attempted to be reformed by the Statute of *Clarendon*. The unsettled State of publick Affairs during this Reign,

* *Ægther, uterque.* Skinner's Etymol. Dictionary. V. *Æthra*.
 See *Hicks's* Gram. Ang. Sax.

and

and the Weakness of the Regal Power, occasioned by a long and doubtful Competition for the Crown itself, were Incidents which the Clergy knew how to improve, to the Advancement of their own Power; to which nothing could contribute so much, as an exclusive Jurisdiction, conducted and supported by a Body of Laws, compiled * about this Time, on purpose to countenance the Pretensions of the Church on the secular Powers. In this Season of publick Distraction, the Clergy introduced the Study and Practice of the Canon Law into England, in spite of all the King could do to prevent it. Sir Henry Spelman is of Opinion, that it was brought hither with the Doctrine of Appeals to the Court of Rome; whereof, as he observes, the first Intimation we meet with, is at the Council of Winton, Ann. 1139. Gervase, speaking of the same Times, saith, "*Tunc Leges & Causidici in Angliam PRIMO vocati sunt, quorum primus fuit Magister Vacarius. Hic in Oxenfordia Legem docuit, & apud Romam Magister † GRATIANUS.*" This, with what I am going to mention, confirms my Suspicion that the Clergy introduced the exclusive Jurisdiction of the Spiritual Court, in this Reign, together with the Canon Law. For in the Time of Henry the First, King Stephen's

Selden on
Fortescue. p.
45.

Codex Vete-
rum Statut.
apud Wil-
kins. p. 315.
318.

Inter decem
Script. 1165.

Spelm. Cod.
vet. Statut.
apud Wilkins.
p. 305.

* Gratian's Decretum was finished about the Year 1150. the 15th of King Stephen.

† The Compiler of the Decretum.

11. H. I.
cap. 7, 8, 9,
11 & 31.

immediate Predecessor, we meet with plain and uncontestable Proofs of the Civil Courts retaining their antient Jurisdiction in Ecclesiastical Causes. Whereas it is as plain, that in the Time of *Henry II. Stephen's* immediate Successor, the two Courts Ecclesiastical and Civil are constantly spoken of as distinct, and enjoying separate Jurisdictions.

The fundamental Error which gave Countenance to the separate Jurisdiction in Ecclesiastical Causes, and indeed to all the exorbitant Pretensions of the Priesthood, was the Principle his Lordship sets out with, *The Power of the Church or Clergy for Correction and Discipline*, AS GROUNDED ON THE WORD OF GOD. The admitting this Principle made way for the Papal Supremacy : For had Ecclesiastical Jurisdiction been considered as a Branch of Power grounded on human Laws, and to be regulated by *them*, an *universal Bishop* could not have subsisted, without an *universal Monarch*. One must have arisen and fallen with the other; and the different States of *Christendom* would as readily have submitted to one as the other. But on the other Hand, let it be granted that Episcopal Jurisdiction is of divine Right; and let the Imagination be well heated with the Beauty and Expediency of Ranks, Degrees, and Orders in the Church; and we shall find it not so difficult as some may imagine, for weak People to advance in their Conceits from Prelates to Primates, and thence to Patriarchs.

King

King *James I.* had, or pretended to have, a Zeal for the divine Right of Episcopal Jurisdiction; but he could not stop there: His Principles carried him up to the spiritual Supremacy of the Pope; to whom he declares himself willing to submit, as Patriarch of the West, and *primus Episcopus inter omnes Episcopos, & Princeps Episcoporum*; even, says his Majesty, as Peter was *Princeps Apostolorum*.

Premonition
to the Ap-
ology for the
Oath of Al-
legiance.
Edit. 1609.
p. 46.

I would not be understood to insinuate, that the Supremacy of the Pope is a necessary Consequence from the divine Right of Episcopal Jurisdiction. But, I believe, I may venture to affirm, that the divine Right, appropriated to *Ecclesiasticks*, is the cursed Root of Bitterness from whence the Papal Supremacy sprung. And if the Principle of a Right of Jurisdiction, underived from the Civil Magistrate, doth not always lead to the Popery of the Church of *Rome*, it leads to a State of Things, equally mischievous and more absurd; *I mean a Popery at our own Doors*. Our Ancestors, at and about the Time of the Reformation, had plainly this Notion of the Matter; and therefore they did not content themselves with barely abolishing the usurped Power of the Bishop of *Rome*, but went to the Root of the Evil, and declared, that all Jurisdiction, as well Ecclesiastical as Civil, is vested in, and exercised by Delegation from, the Crown.

26. Hen. 8.
c. 1.

“ The King, his Heirs and Successors,
“ shall be taken and reputed the only su-
“ preme Head in Earth, of the Church of
“ *England*. — And shall have full Power
“ from Time to Time, to visit, reform,
“ correct and amend all such *Errors, Here-*
“ *sies and Enormities*, whatsoever they be,
“ which by any Manner of *Spiritual Autho-*
“ *rity or Jurisdiction*, are, OR LAWFULLY
“ MAY BE reformed, ordered, corrected,
“ or amended, any Usage, — or any other
“ *Thing or Things* to the contrary notwith-
“ standing.

37. Hen. 8.
S. 1.

“ Where your Highness is, and hath al-
“ ways justly been, by the Word of God,
“ supreme in Earth of the Church of Eng-
“ land, and hath full Power — to correct,
“ punish and redress all manner of *He-*
“ *resies, Errors, Vices, Sins, Idolatries*
“ *and Superstitions*, sprung and growing
“ within the same. — Nevertheless, the
“ Bishop of Rome, and his Adherents,
“ minding utterly to abolish — such Power
“ given by God to the Princes of the Earth,
“ whereby they might gather and get to
“ themselves the Government and Rule
“ of the World, have made divers Ordi-
“ nances, — that no Lay or married Man
“ should exercise any Jurisdiction Ecclesia-
“ stical, — lest their false and usurped
“ Power — should decay, wax vile, and
“ be of no Reputation. — And albeit the
“ said Ordinances, by a Statute made in
“ the

16. Sect. 2.

“ the 25th Year of your Majesty’s Reign, be
 “ utterly abolished——yet because the Con-
 “ trary thereto is not put in Practice by
 “ the Archbishops, Bishops, Archdeacons,
 “ and other Ecclesiastical Persons, *who have*
 “ *no manner of Jurisdiction Ecclesiastical,*
 “ *but by, under, and from your Majesty)*
 “ it might give Occasion to evil disposed
 “ Persons little to regard the Proceedings
 “ and *Censures ecclesiastical, made by your*
 “ *Higness and your Vicegerent, Officials,*
 “ *Commissaries, Judges, Visitators,* being
 “ also Lay and married Men. Therefore, Ibid. S. 4.
 “ be it enacted, that all Persons, as well
 “ Lay, as those that be now married——
 “ being Doctors of the Civil Law, who
 “ shall be——deputed to be any Chancellor,
 “ Vicar General, by your Majesty, or by any
 “ Archbishop, Bishop, Archdeacon, or any
 “ other Person whatsoever, having Authority
 “ under your Majesty to make any Chancel-
 “ lor——may lawfully exercise all manner
 “ of Jurisdiction, commonly called Ecclesi-
 “ astical Jurisdiction——any Law or Ordi-
 “ nance to the contrary notwithstanding.

“ All Authority of Jurisdiction spiritual 1. Edw. 6.
c. 2. S. 3.
 “ and temporal, is derived from the King’s
 “ Majesty, as supreme Head of the Churches
 “ and Realms of *England and Ireland.*

“ Be it enacted, that such Jurisdiction—— 1. Eliz. c. 12.
S. 17.
 “ spiritual and ecclesiastical, as by any spi-
 “ ritual and ecclesiastical Power hath hereto-
 “ fore been or MAY BE LAWFULLY exer-
 “ cised

“ cised for the *Visitation of the ecclesiastical*
 “ *State and Persons, and for Reformation,*
 “ *Order, and Correction of the same,* and of
 “ all manner of Errors, Heresies and Enor-
 “ mities, shall for ever be united to the Im-
 “ perial Crown of this Realm. And that
Ibid. S. 18. “ your Highness—shall have full Power—
 “ to assign, name and authorize—such
 “ Person or Persons—as your Majesty
 “ shall think meet to use, exercise and oc-
 “ cupy under your Highness all manner of
 “ Jurisdictions—in any wise touching any
 “ Ecclesiastical Jurisdiction—And to visit
 “ and reform—all such *Errors, Heresies,*
 “ *Schisms and Enormities* whatsoever, which
 “ by any manner of spiritual or ecclesiasti-
 “ cal Authority can or lawfully may be re-
 “ formed.

I fear it will look like an Affront to
 my Reader's Understanding to trouble him
 with any Remarks on these Passages:
 The Text is so plain it seems to need no
 Comment. But I am put under a Neces-
 sity of tempting my Reader's good Nature:
 For his Lordship conceives “ that these
P. 17. “ Parliamentary Declarations touching the
 “ Royal Supremacy must be interpreted
 “ consistently with that *other Authority*
 “ which our Constitution acknowledges to
 “ belong to every Bishop by the Word of
 “ God.” If by *that other Authority*, his
 Lordship means an Authority of *Jurisdic-*
tion, (which I think he doth) I do not see

how these Acts can, without great Violence to them, be supposed to admit of any Construction in favour of such an Authority. If it had been the Intention of the Legislature, to have saved to our Bishops an Authority supposed to be vested in them by the Word of God, surely there would have been in some or other of these Acts, an express Saving to that purpose: Since they *declare* in very strong and comprehensive Terms, not only against the Papal Usurpations; but that *all manner of Jurisdiction which by any manner of ecclesiastical Power can or* **LAWFULLY MAY BE exercised for Correction and Discipline,** *is in the Crown, and is exercised by Authority derived from thence.*

And that the Legislature had no *secret Reserves* in favour of any Jurisdiction supposed to belong to the Bishops *by divine Right*, is farther cleared by their Conduct in relation to the Religious Houses exempt from Episcopal Jurisdiction. I observed before, that those Exemptions intimate to us, that our Ancestors esteemed Episcopal Jurisdiction as a Branch of Power subject, as all other subordinate Powers are, to the Disposal of the Legislature. And if the Legislature at the Time of the Dissolution of the exempt Houses, had thought otherwise of the Matter; if they had esteemed Episcopal Jurisdiction, as inseparable from the Office of a Bishop; they would have re-
stored

stored to the Bishops their Jurisdiction over the exempt Places in their respective Dioceses. They would not, they *could not consistently with his Lordship's Notion of Episcopal Jurisdiction*, have impower'd the King to grant it to such Person or Persons as his Majesty should think meet, as they did by the 31. *Henry VIII.*—In Consequence of this Statute, *Laymen* in many Places became entitled to Episcopal Jurisdiction by Grants from the Crown. Indeed, when the Nation returned to the Obedience of the See of *Rome*, those Grants were render'd ineffectual by Statute in the first and second of *Philip and Mary*; “ For that, as the Act “ says, Laymen could no more enjoy such “ Supremacy over particular Churches, than “ *the King might over the whole Realm.*”

31. H. 8.
c. 12, S. 23.

1. 2. Ph. &
Mar. c. 10.
S. 47, 48.

1. Eliz. c. 1.

But the first and second of *Philip and Mary* being repealed, as far as concerns this Matter, the Ecclesiastical Jurisdiction in *Lay Hands* stands to this Day on the Foot of the 31. *Henry VIII.* and Royal Grants pursuant to it. What Opinion must the Nation be supposed to entertain concerning Episcopal Jurisdiction, when the Law considers MEER LAYMEN as capable of it!

But what Notions concerning this Matter, prevailed about the Time of the Reformation, will further appear by what follows. It is well known that the Lord *Cromwell* was the King's *Vicegerent* for Ecclesiastical Affairs. What was the full Extent of his Authority

Authority we cannot say; his Commission having been destroyed, as the late Bishop *Burnet* supposes, in *Queen Mary's Days*. It appears however, from a general Recital of it in the Papers I am going to mention, that he was impower'd to exercise, by himself or his Commissaries, all manner of Ecclesiastical Jurisdiction and Authority which belonged to the King, as supreme Head of the Church. Bishop *Burnet* hath given us ^{2d. Vol. Collection of Records, f. 273.} a Copy of Part of a Commission to certain Commissaries for Ecclesiastical Affairs, " In
 " which, after declaring the King's Resolution to begin the Work of Reformation with those, who had formerly arrogated to themselves the Government of the Church, but by their Misbehaviour and evil Example had corrupted it, and given Scandal to the Laity: And after reciting *Cromwell's* Commission, and his Appointment of the Commissaries, with the King's Approbation of them, they (the Commissaries) are authorized to visit tam in Capite quam in Membris, all and singular Churches, even Metropolitan, Collegiate and Cathedral Churches, Hospitals, Monasteries, and other Ecclesiastical Houses and Places: And to enquire into the State and Condition of them, as well in Spirituals as Temporals: And concerning the Life and Manners, as well of the Heads and Prelates of such Churches or Places, of what Rank and
 " Condition

“ Condition soever, though they be *Arch-*
 “ *bishops or Bishops*, as of all other their
 “ Members: And to correct and punish
 “ those whom they should find culpable,
 “ even by a total or temporary Depriva-
 “ tion, or by Suspension, as the Nature of
 “ their Crimes should require. They are
 “ likewise impower’d to hear and deter-
 “ mine all manner of Causes belonging to
 “ the Ecclesiastical Courts; and to compel
 “ Obedience to their Sentences, as well by
 “ Ecclesiastical Censures, as by pecuniary
 “ Mulcts, and all other lawful Methods*.

The Commission for *Vicergerency* was
 not revived after the Death of *Cromwell*.
 It was a Burden too great for one Man,
 and, in all Probability, sunk him. But
 Commissions, not much unlike it, were fre-
 quent in the Reigns of Queen *Elizabeth*,
James and *Charles* the First. That of the
 first of *Elizabeth* for the Province of *York*,
 we have in Bishop *Burnet*’s second Volume.

Collection
 318.

“ It is directed to several Commissioners,
 “ (all Laymen, except *Dr. Sandys*) and
 “ impowers them, four, three, or two of
 “ them, to visit *tam in Capite quam in Mem-*
 “ *bris*, all Cities and Dioceses within the
 “ Province; and all Cathedral, Collegiate,
 “ Parochial and Prebendal Churches there-
 “ in: And to enquire into the Lives, Man-
 “ ners and Qualifications of the Clergy;

* This Instrument is called *Cromwell*’s Commission in *Burnet*’s Col-
 lection of Records. But it is plain, the Person whom his Lordship em-
 ployed to transcribe it, mistook the Title of it.

“ and

and to punish Delinquents according to their Demerits, even by utter Deprivation or Sequestration. It likewise impowers them to proceed by Ecclesiastical Censures; and to grant Licences for Preaching to such Clergymen whom they should judge qualified for that Work.

I think these Things are by no Means consistent with a Notion of the Divine Right of Episcopal Jurisdiction. Nor can Cranmer's taking out a Licence under the Great Seal to make his Metropolitcal Visitation, be reconciled to that Notion; unless we are to suppose that he was over-aw'd by Henry VIII. into such a Compliance against his own Sense of Things. But I see no Room for such a Supposition; because in the Time of Edward the VI, when Cranmer rather conducted our Ecclesiastical Affairs than followed the Guidance of other People, Inhibitions were sent to the Bishops, suspending their visitatorial Power, and all Exercise of Episcopal Jurisdiction throughout the Kingdom, till Licence obtained from the Crown, FOR THAT THE KING HIMSELF INTENDED SHORTLY TO VISIT.

Burnet, Vol.
I. f. 175.

Burnet Vol.
II. f. 25.
and the Col-
lection of
Records,
f. 94.

An Inhibition of this Kind, grounded upon the Reason here mentioned, may seem strange to many of my Readers; but to those who know that all the Bishops had taken out Commissions under the Great Seal for the Exercise of Episcopal Jurisdiction DURING THE

Burnet, Vol.
I. Collection,
f. 173. Vol.
II. Collect.
f. 82.

Vol. I. f.
255.

Vol. 2. f. 5.

THE KING'S PLEASURE ONLY, the Matter will not be at all surprizing. Bonner's Commission from Henry VIII. and Cranmer's from Edward VI. are still extant. That to Bonner recites Cromwell's Commission for the Vicegerency: "But BE-
" CAUSE the Vicegerent could not personally attend his Charge in all Parts of the Kingdom, the King authorizes the Bishop in his (the King's) Stead to ORDAIN within the Diocese of London such as he should judge worthy of Holy Orders; to collate to Benefices, and give Institution; to visit within his Diocese; and to execute all other parts of the Episcopal Authority; and this DURING THE KING'S PLEASURE ONLY." When Dr. Burnet published the First part of his History, he was doubtful whether the other Bishops took out the like Commissions: And seems to think, that Bonner took out this, to insinuate himself into the King's Confidence. For as the Bishop observes, "Bonner apprehending Cranmer's Interest with the King, was grounded on some Opinions of his, touching the Ecclesiastical Officers being as much subject to the King as the Civil Officers were, resolved to outdo him in that Point." But I believe his Lordship was satisfied when he published his Second Part, that all the Bishops took out the like Commissions from Henry VIII. "The Bishops, saith his Lordship, (speaking of

" of the *Accession of Edward VI.*) were
 " requir'd to take out new Commissions of
 " the same Form with those they had taken
 " out in King Henry's Time; only no
 " Mention was made of a Vicar General in
 " the new Commissions," that Office being
 laid aside.

Cranmer set an Example to the rest; and took out his Commission FOR CONFERRING ORDERS, and for the Exercise of all other Parts of the Archi-episcopal Jurisdiction in the Name of the King, and by Virtue of his Authority, DURING HIS MAJESTY'S GOOD PLEASURE. The Commission bears Date the Seventh of February, just a Week after the King was proclaimed: So necessary was it judged, that the Bishops should lose no Time in renewing their Commissions; which were thought to determine, as other Powers of the like Kind did, upon the Demise of the King.

With my Reader's Leave, I will take a short Review of those Transactions, which I think let us fully into the Sense of our Reformers, touching the Source and Spring of Episcopal Jurisdiction. The Statutes declare, that the King, as supreme Head of the Church, hath Power to visit and reform all Errors, Heresies and Enormities, which by any manner of spiritual Authority, are, or lawfully may be, reformed: That Archbishops, Bishops, and other Ecclesiastical Persons, have no manner of Jurisdiction

D

dition or Authority, but by, under, and FROM the King; from whom all Ecclesiastical Jurisdiction is derived. In consequence of these Parliamentary Declarations, Commissions issue under the Great Seal, empowering LAYMEN to visit *tam in Capite quam in Membris*, all Churches without Distinction; to enquire into the Lives, Manners and Qualifications of the CLERGY OF ALL RANKS: To punish Delinquents, by Deprivation or Suspension; and in general to inflict ALL MANNER OF CHURCH CENSURES. The Bishops sue out Commissions under the Great Seal, empowering them to *confer Orders, to visit their Dioceses*, and to exercise ALL OTHER BRANCHES OF THE EPISCOPAL AUTHORITY DURING THE GOOD PLEASURE OF THE KING. And *Inhibitions* are sent to the Bishops, suspending their visitatorial Power, and the Exercise of ANY MANNER OF Episcopal Jurisdiction throughout the Kingdom, till Licence obtained from the King, FOR THAT THE KING HIMSELF INTENDED SHORTLY TO VISIT.

P. 17.

His Lordship, as I before observed, is unwilling to admit, that the Acts I have cited are to be carried further, than to the excluding the usurped Power of the Bishop of Rome: And insists that "they must be interpreted consistently with *that other Authority*, which our Constitution acknowledges to belong to every Bishop by the Word of God." What that other Authority is, which is supposed

to be recognized by our Constitution as belonging to every Bishop by the Word of God, his Lordship explains in the next Page: It P. 18. is, *An Authority for the Exercise of ALL MANNER OF Spiritual Discipline within their respective Dioceses.* But from what Statute, or other publick Act, doth his Lordship infer, that our Constitution acknowledgeth this Authority, An Authority for the Exercise of *all manner of* spiritual Discipline, to belong to every Bishop by the Word of God? The Statutes I have already cited speak in a quite different Stile: And the other publick Acts I have mention'd were certainly grounded on a contrary Principle. His Lordship is of opinion, that the Principle he contendeth for, is imply'd in the *Office of Consecration*: Which having been P. 17. confirm'd by divers Acts of Parliament, amounts to a Parliamentary Recognition of every Power asserted or implied in it.

The *Office of Consecration*, as far as concerns this Matter, runs thus: The Archbishop addressing himself to the Bishop Elect, says; " Will you maintain and set forward, as much as in you shall lie, Quietness, Love, and Peace, among all Men; and such as be unquiet, disobedient and criminous within your Diocese, correct and punish according to such Authority as you have by God's Word, and as to you shall be committed by the Ordinance of this Realm?

D 2

Answer.

Answer.

“ I will do so, by the Help of God.

P. 13.

From this *single Passage* his Lordship infers, that our Constitution acknowledgeth an Authority in our Bishops, as vested in them by the Word of God, for the Exercise of ALL MANNER of spiritual Discipline within their respective Dioceses; and that the supposing such a Jurisdiction in the Church by divine Right, is not inconsistent with the Principles of the Reformation. But, with great Submission, I think his Lordship's Inference is not at all warranted by this Passage; especially when the many full, positive and express Parliamentary Declarations of a quite contrary Tenor, before cited, attended with a Series of publick, solemn and national Transactions, through the three successive Reigns, in which the Reformation was begun, carried on and compleated, are put in the Balance with it. Besides, if it should be admitted that the *Office of Consecration* supposeth any Sort of Jurisdiction to belong to our Bishops by divine Right, will it follow that an Authority for the Exercise of ALL MANNER of Spiritual Discipline belongs to them by that Right? All that can be inferr'd from the *Office of Consecration* is, that it supposeth a Power for Correction and Discipline to be vested in the Bishop by the Word of God, and by the Ordinance of the Realm. But what

what those Powers especially are, which are supposed to be grounded on the Word of God, in *Contradistinction* to the Ordinance of the Realm; or how, or in what Cases, or under what Restrictions, they are to be exercised, is not determin'd. And consequently, nothing which is asserted or implied in that Office touching the divine Right, can be applied to Ecclesiastical Jurisdiction, *as now exercised by our Bishops*, (or rather in the Ecclesiastical Courts) unless it could be shewn that *that* Jurisdiction is grounded on the Word of God; which his Lordship hath not done. And indeed I cannot but repeat it, that since his Lordship thought it expedient to set out with the Divine Right of Episcopal Jurisdiction, it would have been more satisfactory to his Readers to have been directed to those *Passages of Scripture* where *that* Jurisdiction is to be met with; than to have seen the whole Stress of the Argument laid on a *Parliamentary Recognition* of it: Even supposing his Lordship could have shewn, that such Recognition was applicable to *the present State* of our Ecclesiastical Polity. Which, upon very good Grounds, I believe no Man of Learning will ever attempt.

His Lordship "having cleared, as he says, ^{P. 18.}
 "the Divine Right of the Church to the Ex-
 "ercise of Spiritual Discipline," proceeds to
 "consider the Administration of Ecclesiastical
 "Matters under the Prince, as supreme Head
 "of

P. 19.

“ of the Church; as it stands distinguished
 “ from the Administration of temporal Mat-
 “ ters under the same Prince, as Sovereign of
 “ the State.” And having premised that it
 is of the utmost Importance to the Peace and
 Happiness of the Community, that the *Spiri-*
tual and *Temporal* Courts keep themselves
 within their proper Bounds, proceeds to men-
 tion some of the *Grievances* the Spiritual Juris-
 diction is supposed to lie under in the pre-
 sent State of Things. The first is, that *Pro-*
hibitions issue from the Courts of *King's-*
Bench and *Common-Pleas*, to the Ecclesiasti-
 cal Courts.

It may easily be made appear, if it shall
 be thought necessary, that *Prohibitions* have
 gone from the *Temporal* to the *Spiritual*
 Courts, as from a *superior* to an *inferior*
 Jurisdiction, ever since the two Jurisdic-
 tions have been separated. And indeed the
 Notion of a Subordination of Jurisdictions
 implies that it is the Province of the one
 to restrain and correct the Excesses of the
 other. This Supremacy of the Courts of
Westminster-Hall over the *Ecclesiastical*, hath
 in all Ages given great Disturbance to that
 Part of the Clergy, who have affected an
 absolute Independence on the State. The
 Arguments indeed which have been em-
 ployed against it have been different, as the
 Temper of the Times and the Circum-
 stances of the Church have varied. But the
 Point in View hath been generally the same,
 the

the Independence of the Church. In Popish Times, when the Church could *scold* and thunder with Impunity, this Independency was claimed in *direct Terms*: And the King and all his Civil Ministers were admonished not to disturb the Church in the Exercise of Spiritual Discipline, by *Prohibitions* and *Attachments* grounded on them, under pain of *Excommunication*, *Suspension*, and *Interdict*. But since the Supremacy of the Crown in Ecclesiastical Causes hath been esteemed a fundamental Principle of our Constitution, that very Supremacy hath been thought a sufficient Argument for overthrowing the ancient Jurisdiction of the Temporal, over the Spiritual Courts.

Archbishop *Bancroft* made this Use of ^{2d Inst. 601.} the *Regal Supremacy*, in the Articles he exhibited to the Lords of the Privy-Council against the Judges of *Westminster-Hall*, upon the Head of *Prohibitions*. His Lordship hath adopted the Argument, and pressed it with all the Advantage it is capable of. "The Authority of Spiritual Courts ^{P. 19.}

"and Temporal Courts of Law *flowing equally*
 "from the Crown, and it being of so great
 "Importance to the Good of the Communi-
 "ty that each be kept within its proper
 "Bounds, it seems by no Means agreeable to
 "that *Equality of Original and Descent*, nor
 "a Way in any Degree likely to attain that
 "important End, that the one should be
 "set as a Judge over the other, and pre-
 "scribe

" scribe Bounds to it ; and TAKE TO IT-
 " SELF THE Cognizance of whatever Mat-
 " ters IT SELF SHALL PLEASE. I shall not
 " say how well the Bounds in the present
 " Case are preserved upon that Foot; but
 " certainly it would not be thought a good
 " expedient for preserving Bounds of any
 " other Kind, to impower one to judge
 " for both (*i. e.* to impower him to EN-
 " CROACH upon his Neighbour, and EN-
 " LARGE HIS OWN BOUNDS AT PLEASURE)
 " as oft as any Controversy shall arise."

The Force of this Reasoning *from the Equality of Original*, I think lies here: The Temporal and Spiritual Courts flow equally (*or rather alike*) from the Crown, or are equal in Point of Original and Descent: Therefore they are, or ought to be equal, in Point of Jurisdiction; the one ought not to have a restrictive Power over the other. If this be not his Lordship's Inference, how can it be said that the setting one of the Courts as Judge over the other, *seems not agreeable to their Equality of Original and Descent?* But if his Lordship intended to infer an Equality in Point of Jurisdiction, from what he is pleased to call an Equality of Original and Descent, he will be pleased to apply the same Reasoning to every other Court in the Kingdom, from the High Court of *Parliament*, to the Court of *Pipowder*: And if it should appear that they all flow equally, *or alike*, from the

same

same Original, *Law and immemorial Custom*; I fear his Argument will conclude against any manner of Subordination among them, in Point of Jurisdiction; which would be carrying the matter much farther than he intended: Though, I confess, I do not know where to stop, if the Argument, grounded on the Equality of Original, with regard to the Spiritual and Temporal Courts, concludes at all in favour of the former.

But his Lordship hath favoured us with another Train of Reasoning against *Prohibitions*, grounded on the seeming Absurdity and Inconvenience of setting one Court as Judge over the other, in Questions touching the Bounds of their several Jurisdictions. And if the Case was, as his Lordship represents it, the Absurdity and Inconvenience would be great indeed; if the Temporal Court might *lawfully* take to itself the Cognizance of whatever Matters IT SELF SHALL PLEASE, or was *impowered* to INCROACH upon the Spiritual, and to enlarge its own Bounds AT PLEASURE: If this, I say, was implied in the Right claimed by the Temporal Courts, of giving Remedy against the Incroachments of the Ecclesiastical, (which is all that is intended by the Writ of *Prohibition*) the Absurdity would be as great as his Lordship endeavours to represent it. But his Lordship will forgive me, if I say, the Absurdity lies only in *his* State of the Case: Our excellent Constitution

tution is not chargeable with it. The Bounds of Ecclesiastical Jurisdiction are already settled by Law and immemorial Custom; to which the Judges are obliged by Oath, and by the Duty of their Place, to conform themselves. The granting *Prohibitions* is not a Power to be exercised, or not, at the Pleasure of the Court: It is not the Court's taking to itself the Cognizance of whatever Matters *itself shall please*, or enlarging its own Jurisdiction *at pleasure*: No; it is a Matter of MERE RIGHT, in which the Judges are to be guided by the known Laws of the Land, *and not by Will and Pleasure*.

I never heard that a Power of judging by known Laws, implied a Power *or Right* (for in a legal Sense Power and Right mean the same Thing) of judging contrary to Law. His Lordship will not say it doth so in any other Case; but in this Case, Power in his Lordship's Sense, if I understand the *i. e.* in the Passage I have cited, signifies a Power *or Right to encroach, i. e. a Right to do Wrong*. Powers of all Kinds may be abused: The Power inherent in every Court of punishing Contempts, and vindicating its own Honour, may be abused: But to suggest that these Powers, or in particular, the Supremacy of the Courts of *Westminster-Hall* over the Ecclesiastical, and all other inferior Jurisdictions, are *ordinarily* abused, or *are likely to be so*, is, I think,

An Affront on the Justice of the Kingdom, and borders very near on a LIBEL upon the Constitution. And yet, without the Help of such a Suggestion, all the Reasoning in this Passage stands for nothing: And, for ought I see, the Doctrine of *Prohibitions* may without any Inconvenience, continue upon the ancient Foot, without resorting to either of the Expedients we meet with in the *Codex*.

One of them is, *That Prohibitions should,* P. 19. C.
1066.
for the future, issue out of the Court of Chancery alone; which should act as a COMMON UMPIRE between the Courts of Common Law and the Ecclesiastical Courts, as oft as Controversies arise about their respective Bounds. His Lordship will be pleased to remember, that his principal Argument against *Prohibitions* from the Temporal to the Spiritual Courts, is grounded on *an Equality of Original and Descent* between the two Jurisdictions: And that, since they both flow equally from the Crown, it seems to his Lordship *not agreeable to that Equality, that one should sit as Judge over the other.* If his Lordship will give me leave to make use of his own Argument, I believe it will conclude as *strongly against him* in the present Case, as it can be supposed to conclude *for him*, in that to which he hath applied it. The Court of *Chancery*, in Point of Original and Descent, stands upon a Foot of perfect Equality with those Courts, between whom his Lordship proposeth it should sit *as a common Umpire.*

pire. A Right of Umpirage, by Appointment of Law, or a Right of judging definitively between contending Jurisdictions, implies a Superiority. His Lordship, therefore, will either admit, that a Superiority, in Point of Jurisdiction, is very consistent with what he is pleased to call *an Equality of Original and Descent*; or will shew, that the Court of *Chancery* and Courts of *Common Law* have not the same Original.

C. 1066.

But why is the Court of *Chancery* pitch'd upon as a proper Umpire in the Case? I apprehended the Grievance had been, *that the Spiritual Courts are PESTER'D with Prohibitions from the Temporal.* And is not the Court of *Chancery* a Temporal Court? It is; and if it were to act, as his Lordship proposeth, in the Affair of *Prohibitions*, it must act, not as a Court of Equity, *but as a Court of Common Law*, subject to the same Rules of Law as the Courts of *King's-Bench* and *Common-Pleas* are. So that I do not see the Matter would be mended by the Alteration propos'd; unless there was any reasonable Ground to expect, that as Churchmen have formerly been at the Head of the Court of *Chancery*, they may be so again. Perhaps, an Imagination of this kind might induce *Bancroft* and his Clergy, in the weak Reign of *James I.* to propose the making the Court of *Chancery* the sole Judge in Questions touching *Prohibitions.* But as there is no manner of Probability that

2 Inst. 609.

that high Dignity should ever again fall to the Share of any Ecclesiastick, I think the Clergy may be content to leave the Business of *Prohibitions* in the Hands the Wisdom of the Nation hath intrusted with it.

The Expedient of appointing a common Umpire between the Spiritual and Common Law Courts, in the Matter of *Prohibitions*, would never have satisfy'd a corrupt and ambitious Clergy. There is another better suited to *their* Views, and more likely to effect the Point they have been so long labouring, an absolute Independence on the State; and that is, *the Employing the Censures of the Church in defence of Ecclesiastical Jurisdiction*. Bancroft's concluding 2. Inst. 617. Article, on the Head of *Prohibitions*, is a direct Claim in behalf of the Church, grounded on *antient Canons*, to make use of the Censure of *Excommunication*, in order to restrain the Encroachments of the Temporal Jurisdiction on the Ecclesiastical. His Lordship concludes his Chapter, concerning the writ of *Præmunire*, with the Article at C. 1063, 1064. large, and the Judge's Answer to it; and begins his next Chapter with some of the Canons Bancroft probably referred to, the Canons of *Boniface*, made in the latter End of the Reign of *Henry III.* Ann. 1261.

It is well known that Ecclesiastical Power about this Time, arrived to the highest Point of Exorbitance it ever reached in *England*. It is no wonder therefore, that the Clergy

Clergy in Convocation, supported by a Primate, Uncle to the Queen Consort, and encouraged by the Weakness of the Administration, and the Distraction of the King's Affairs, should at *such a Juncture* make an Attempt upon the Prerogative, which, at another Time, would have been entertained with an Indignation that might have proved fatal to them. The Reader may meet with the Canons at large in the Collection at the End of the *Oxford* Edition of *Linwood*, under the Year 1260. That his Lordship hath placed in the Front, recites, " That Ecclesiastical Judges had
 " been frequently required, by the King's
 " Writs, to answer before secular Judges,
 " in Causes belonging to the Ecclesiastical
 " Court; and ordains that the Ecclesiastical
 " Judge shall not, in such Cases, obey the
 " King's Writ, *since Laymen have no Authority to sit in Judgment over the Lord's*
 " *Anointed.* And if the Writ shall suggest
 " any temporal Cause, whereon it is supposed to be grounded, the Ecclesiastical
 " Judge shall answer, that he takes Cognizance of the Cause in a Spiritual Way
 " and shall solemnly *admonish* the King
 " that he recall the Writ, as he tends the
 " Welfare of his Soul: Which if the King
 " shall neglect to do, he shall be *personally*
 " *admonished*, to the same Purpose, by the
 " Archbishop, or Bishop of *London*, assisted
 " ed by two more Bishops. And if the
 " King

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“ King, in contempt of such Admonition,
 “ shall proceed to Writs of *Attachment*
 “ or *Distingas*, the Sheriff and all Officers
 “ executing such Writs, shall be excommu-
 “ nicated and suspended: And such Officers
 “ remaining obstinate, the Places of their
 “ Residence, and all their Lands within the
 “ Province, shall be put under an Interdict.
 “ And if the King, after due Admonition,
 “ recall not such Writs, the Lands, Towns
 “ and Castles of the King, within the Dio-
 “ cese to which such Writs issue, shall in
 “ like manner be put under an Interdict.
 “ And if the King SHALL PERSIST IN HIS
 “ OBSTINACY, all the Bishops shall make it
 “ a common Concern, and put the Cities,
 “ Towns, Castles, and Demesnes of the
 “ King, within their respective Dioceses, un-
 “ der an Interdict. And if the Writ shall not
 “ be recalled within 20 Days afterwards, or if
 “ the King shall deal hardly with the Church,
 “ on account of this Proceeding, the Arch-
 “ bishop and all the Bishops of the Pro-
 “ vince shall *put their Dioceses under an*
 “ *Interdict*. And if any Bishop shall be
 “ remiss in the Premises, and shall perse-
 “ vere in such Remissness, after Admoni-
 “ tion, he shall be punished *canonically* *,
 “ and his Diocese shall, notwithstanding,
 “ be put under an Interdict.” Those of my
 Readers who may never have perused the
Codex, will not be displeased at this large
 Abstract of so remarkable a Canon. They

* By the Archbishop. — Linwood.

have

have at least a *Taste* of some of the Materials, which serve to swell a very short defective Performance to the Size of Two Folio Volumes.

With what particular View his Lordship was at the Pains of transcribing this, and other Constitutions of the like Nature, I will not undertake to say, : They cannot serve for the Illustration of any Branch of Ecclesiastical Law, *as it stands at present*; since, however *Bancroft* and his Clergy might wish to see the Spiritual Sword drawn against the Courts of *Westminster-Hall*, that Method of supporting Ecclesiastical Jurisdiction is *not yet* become Part of our Constitution; neither can they serve to give the Reader any Idea of the *Antient* Law in the

2. Inf. 599. Case. “ For *Boniface’s* Canons had no other Effect, *as my Lord Chief Justice* “ *Coke assures us*, than to cause the Ecclesiastical Judges to encroach upon the “ Common Law,” and to set the two Jurisdictions at variance. But, *says he*, “ notwithstanding the Greatness of *Boniface*, “ yet the Judges proceeded according to “ the Laws of the Realm; and still kept, “ though with great Difficulty, the Ecclesiastical Courts within their just and proper Limits.” To what End therefore are *Bancroft’s* Articles and *Boniface’s* Constitutions, both leading to the same Point, placed together in the *Codex*; the former by way of Commentary, the latter as

Part

Part of the Text of our antient Canon Law?

His Lordship, in the Preface to the *Codex*, shews the Expediency of giving Laws, not now in force, a Place in a Work of this Nature: Perhaps if we attend to him, we may receive some Light to lead us through this Enquiry, *With what View are these Canons inserted in the Codex?* “ As to the ^{P. 5, 6}

“ general Matter or Text of this Work,—
 “ it is a Mixture of Laws relating to the
 “ Church of *England*, which have from
 “ Time to Time been framed and enacted
 “ by Authority of our Spiritual and Tem-
 “ poral Legislatures; not only such Laws
 “ as are now in force, but such also as are
 “ repealed or obsolete: By the inserting of
 “ which (however unnecessary it may seem
 “ at first Sight) many useful Purposes are
 “ undoubtedly served.—As it is impossible
 “ to reach the true Design (and by Conse-
 “ quence the true Meaning and Extent) of
 “ any Law Ecclesiastical or Temporal, till
 “ we know how the Law upon that Head
 “ stood before; so by the Sight of all for-
 “ mer Laws upon the same Heads,—we
 “ are let into the true Aim and Intent of
 “ the Legislators.—This is what we call a
 “ History of the Law; in which the Rea-
 “ der has the Satisfaction to see by what
 “ Degrees it has been growing and im-
 “ proving —from its Infancy to its present
 “ Stature: And that Retrospect not only
 E “ supplies

“ supplies the Lawyer with many ne-
 “ cessary Notices, for the true Construc-
 “ tion of Law; but enables the Historian to
 “ account for *every Law, and the Ground*
 “ *and Reason of it*, within any Period of
 “ Time he is concerned in. — And if
 “ such an entire View be necessary to the
 “ forming a right Judgment upon the Laws
 “ already made, it cannot be less necessary
 “ *in order to the making of new Laws, as*
 “ *oft as Designs are on Foot to supply*
 “ *the Defects of our Constitution in any*
 “ *Point.* In which Work, — where the
 “ Church finds herself not only not bene-
 “ fited by new Statutes and Canons, but—
 “ prejudiced by them, it may be judged no
 “ improper Remedy *to resume and revive those*
 “ *which are repealed or obsolete.*” — Again,—
 “ The Citations out of antient and modern
 “ Councils and Synods, which have been
 “ held at home and abroad, (as they are
 “ annexed here by way of Commentary to
 “ our present Laws) are designed to shew
 “ on one Hand, that though many of the
 “ Laws are modern, the Constitution is an-
 “ tient; and on the other Hand, *to faci-*
 “ *litate the Improvement of this Consti-*
 “ *tution, by suggesting such useful Rules*
 “ *of Order and Discipline as have been*
 “ *established abroad, OR ATTEMPTED AT*
 “ *HOME.*” I think the Reasons given by
 his Lordship for inserting Ordinances of any
 kind, not now in force, whether consider’d

as antient Laws repealed, or grown obsolete, or as Ordinances foreign or domestick which never obtained the force of Laws among us, are reducible to these Heads: Either they help us to a right understanding of the present Constitution, or shew that it is built on antient Establishments; or enable the Lawyer and Historian to account for the Ground and Reason of the Law; or tend to facilitate the Improvement of our Constitution, by suggesting such Rules for Order and Discipline as have been established abroad, or attempted at home. The Canons under Consideration can never help us to a right understanding of the present Constitution, or enable the Lawyer or Historian to account for the Ground and Reason of the Law, since we have no Law or Practice which bears the least resemblance to them; much less can they shew our present Laws to be built on antient Establishments, since they were never received as Law, and are inconsistent with our Constitution: They cannot come under the Notion of Laws repealed or obsolete, having never had the Force of Law; but they come very properly under the Denomination of Rules for Order and Discipline ATTEMPTED, but never carried into Execution: Attempted first by *Boniface*, in the Height and Wantonness of Sacerdotal Power; and afterwards by *Bancroft*, when the same Spirit was visibly reviving. — I

am still at a Loss to account for it, how those Canons came to be honoured with a Place in the *Codex*. I must therefore leave the Enquiry to abler Heads, and go on to observe, that if Ecclesiastical Jurisdiction could, by the Method suggested in those Canons, or by any other Means, be render'd absolutely independent of the Temporal, the poor Subject would be liable to be perpetually harrassed between two equal independent Powers: A State of Things which could not last long, but must issue in the Ruin of one of the contending Powers, if not of the Constitution itself. And therefore, those who are willing to keep the *Ecclesiastical* Courts in their antient State of Subordination to the *Civil*, are the truest Friends to both: Though Bigots have always treated the Law of Prohibitions, (the only legal Means of preserving that Subordination) as a Grievance to the Church.

C. 1082.

P. 21.

Another Grievance of the like Kind is the *Court of Delegates*; where, as his Lordship complains, " In modern Practice, "
 " (*a Practice, as his Lordship elsewhere in-*
 " *forms us, unheard of till the Year 1604.*)
 " there are *Temporal* Judges and *Temporal*
 " Lords appointed for the final Determinati-
 " on of Matters *confessedly Spiritual*." " Mat-
 " ters, as his Lordship elsewhere says, more
 " merely and undeniably of an Ecclesiastical
 " nature than any others, being purged from
 " all temporal Matter before they arrive " to
 that

that Court. His Lordship's Concern for the Rights of the Clergy, which appear to him to have suffer'd by Appeals to Lay Judges, hath certainly betray'd him into a Mistake, which a little Reflection would have rectified. For are Matters carried from the Spiritual Court to the Delegates, *more merely and undeniably Ecclesiastical, than any others?* I think not; they are the very same Matters, and no other, carried by Appeal from the *inferior* to the *superior* Jurisdiction: The Cause is the same in both Courts, otherwise the Proceeding would not be so properly an Appeal, as the instituting a new Cause in the superior Court. Again, the Ground of the Complaint is, that Spiritual Causes, Causes confessedly Spiritual, are brought before Lay Judges. But are all Matters cognizable in the Ecclesiastical Court in the first Instance, and by the Delegates on Appeal, of a Spiritual Nature? His Lordship hath furnished me with an Answer to that Question. " Causes matrimonial, Causes testamentary, and the like, are *not of a Spiritual Nature*, nor is the Church, as such, at all concerned in them: — They concern only Temporal Rights, ^{P. 25.} they terminate in Rights of a Temporal Nature; and the Cognizance of them being a Work *not fit to be attended by the Bishop in Person* (whether we consider the Nature of it, or the Multitude of other Business which properly belongs

“ to the Episcopal Function) is according-
 “ ly delegated to other Hands.” Where
 then is the Inconvenience of bringing Causes
 that concern Temporal Right, Causes *in*
their own Nature not fit to be attended to
 by the Bishop in Person, and therefore de-
 legated to other Hands; (frequently to *Lay*
Chancellors;) where, I say, is the Incon-
 venience of bringing such Causes before
 Temporal Judges? His Lordship admits that
 Ecclesiastical Courts are intitled to a mix’d
 Jurisdiction; a Jurisdiction in Causes that
 concern *only* Temporal Rights, and also in
 Causes which he presumes to be of a Spirit-
 ual Nature. Methinks therefore he should
 not be offended at the present Mixture of
 Judges Temporal and Spiritual, in the *Court*
of Delegates. Methinks, *the leaving the King*
a Power of appointing Commissioners out of
the Temporality, if he so pleaseth, should
not be thought contrary to the natural Rea-
son of the Thing, and the general Tenour of
our Constitution, as his Lordship declares
 it is.

P. 21.

The Method which, I am informed, hath
 generally prevailed in modern Practice, hath
 been to name, in the *Commission of Dele-*
gates, a certain Number of Temporal Lords,
 Bishops, Judges, and Doctors of the Civil
 and Canon Law: A Constitution which
 seems to comport extremely well with the
 Nature of their Commission. For since
 Common and Statute Law make so great
 a Part

a Part of our Ecclesiastical Constitution; and since, as his Lordship says, " Our present P. 37. " Rule of Government and Discipline in " the Church, are the Laws in being of all " kinds;" it seems highly reasonable that the Judges of *Westminster-Hall*, and Doctors of *Civil* and *Canon* Law, whose Education and Employment have qualified them to excel in their respective Professions, should bear their Part in the supreme Ecclesiastical Court. The principal Reason suggested by his Lordship, for confining the Cognizance of Spiritual Causes to Spiritual Persons, is the *Knowledge and P. 21. Experience of the Spirituality in Spiritual Matters*. This Reason, he says, seems to be as applicable to the Court commonly called the Court of Delegates, as to the inferior Courts. If the Fact was true; if Experience did convince us, that the Spirituality are blessed with a superior Knowledge and Experience in the *Laws in being of all Kinds*; his Lordship's Reasoning would be right. Let us for once take a View of the several Branches of our Ecclesiastical Law, and the several Helps necessary to a thorough understanding of it, as his Lordship hath enu- P. 9. merated them: They are Acts of Parliament; the Provincial and Legatine Constitutions, with the Commentaries of *Linwood* and *Athon*; the Canons of 1603; the Rubricks; the 39 Articles; the Reports, (a Library of themselves;) the Practice of the Church,

as appearing on the Ecclesiastical Records, and Registers of the Episcopal Sees, and the Body of the foreign Canon Law: *Let me add* the Body of the Civil Law. I believe I may venture to say, that if Spiritual Persons were to devote themselves to the Study of these several Branches of our Ecclesiastical Law, with an Application necessary to gain a tolerable Understanding of the whole, they would find very little leisure for the more spiritual Duties of their Function.

Ridley's
View, &c.
Edit. 1662.
p. 156.

The Canon Law, ever watchful over the Dignity and Immunities of the Priesthood, hath provided a *Help-meet* for the Bishop, whom we call the *Chancellor*. Dr. Ridley says, "Chancellors are equal, or near equal in Time, to Bishops themselves;—
" yea Chancellors are so necessary Officers to Bishops, that every Bishop must of necessity have a Chancellor: And if any Bishop would seem so compleat within himself, as that he need not a Chancellor, yet may the Archbishop of the Province, wherein he is, compel him to take a Chancellor; or if he refuse so to do, put a Chancellor on him. For the Law doth presume, it is a Matter of more Weight than one Man is able to sustain, to govern a whole Diocese by himself alone. And therefore, howsoever the Nomination of the Chancellor be in the Bishop, yet his Authority comes from the Law, and therefore he is no less accounted an Ordinary

“ dinary by Law, than the Bishop is.” —

Dr. Godolphin agrees with Ridley, and adds, Rep. Canon, c. 10. Sect. 2.

“ After Princes had granted to Ecclesiastical
 “ Persons their Causes and their Consistories,
 “ and Circumstances varying those Causes
 “ into a more numerous Multiplication,
 “ than were capable of being defined
 “ by former Precedents, Necessity called
 “ for new Decisions, and they for such
 “ Judges as were experienced in such Laws
 “ as were adapted to Matters of Ecclesi-
 “ astical Cognizance; which would have
 “ been too prejudicial an Avocation of Bi-
 “ shops from the Exercise of their more
 “ divine Function, had not the Office of
 “ Chancellor, in determining such Matters,
 “ been an Expedient to prevent the said
 “ Prejudice or Inconvenience.” *As to the*
Extent of the Chancellor's Power, he says,
 “ By this Chancellor, the Bishop within Sect. 1.
 “ his Diocese keeps his Court according to
 “ Ecclesiastical Laws, in all Matters per-
 “ taining to his Jurisdiction, or otherwise
 “ relating more immediately to the Church,
 “ or Government of the Clergy. — The Sect. 10.
 “ Chancellor, as he is *Oculus Episcopi*,
 “ ought to have an Eye into all Parts
 “ of the Diocese; and hath, immediately
 “ under the Ordinary, Jurisdiction in all
 “ Matters Ecclesiastical within the same;
 “ not only for the Reformation of Man-
 “ ners and Punishment of Enormities of a
 “ spiritual Nature, by Ecclesiastical Censures,
 “ but

P. 22, 23,
24, 25. C.
1027.

P. 25.

37. H. 8, 17.

“ but also in Causes Matrimonial and Testamentary.” His Lordship hath taken Pains to shew, that the *voluntary* Jurisdiction of the Bishop, is not invested in the Chancellor, *as such*, and without special Words in his Commission for that Purpose. But as to the *contentious* Jurisdiction, or the Cognizance of all Causes instituted in the Consistory Court, he allows, *that* being a Work not fit to be attended by the Bishop in Person, is delegated to the Chancellor, and *ought to be so*. The Use I would make of these Things is, that since the Law requires that the Bishop shall appoint a Person well skill'd in the Civil and Canon Law, to hear and determine Causes cognizable in the Consistory Court; and since Laymen so qualified are by Law declared capable of that Charge; it doth not seem to me so contrary to the natural Reason of the Thing, or to the general Tenor of our Constitution, as his Lordship represents it, that the principal Professors of the *Common, Civil, and Canon* Laws, should be among the ultimate Judges of the *same Causes* by way of Appeal.

There are other Matters mention'd by his Lordship, by way of Objection to the Modern Practice of joining Lay Lords and Lay Judges with the Bishops in the *Commission of Delegacy*, which out of Defe-
 rence to his Lordship, must be taken Notice of; though I fear my Readers will think I am mispending their Time in doing so.
 “ It

" It will not be deny'd, *saith his Lordship*, P. 21.
 " that the last Resort of all Ecclesiastical
 " Causes was given to the King, upon the
 " *single* Consideration of his being supreme
 " *Head of the Church.*" — Be it so: And will
 it therefore follow, that his Majesty ought
 to exercise his *Supremacy* in this, and all
 other Instances, by the Hands of *Churchmen*
 only? But, " the first Statute of Appeals
 " (24. *Henry VIII.*) expressly limits the Cog-^{ib.}
 " nizance of spiritual Matters to spiri-
 " tual Persons." — The 24. of *Henry VIII.*
 provides for no Appeals beyond the Arch-
 bishop; and consequently doth not come
 up to this Case. But — " this second Statute^{ib.}
 " which intitles the King to the ultimate
 " Cognizance by Commission, doth not
 " limit him to any other Persons; *but*
 " *leaves him wholly to his own Choice.*"
 It doth so: And therefore one would rea-
 sonably hope, no Person will dictate to him
 in a Matter left by the Constitution wholly
 to his own Wisdom.

But his Lordship assures us, " There are^{ib.}
 " no Footsteps of any of the Nobility or
 " Common Law Judges in Commission, till
 " the Year 1604, — nor from 1604 are they
 " found in above one Commission in forty,
 " till the Year 1639. from whence (*i. e.*
 " *from the Downfall of Bishops and their* P. 22.
 " *Jurisdiction*, WHICH ENSUED) *we may*
 " *date the present Rule of Mixtures in that*
 " *Court.*" — His Lordship will be pleased

to remember that the Point under Consideration, is the Fitness or Unfitness of these Mixtures; whether they are, or are not, agreeable to the general Tenor of our Constitution, and the natural Reason of Things: This, I think, is the only Point, his Lordship and his Readers are concerned in. And therefore, whether these Mixtures were introduced at the Commencement of the *Statute of Appeals*, or seventy Years afterwards; or whether they became frequent in Practice, at or about the Year 1639, or at any other Period, is not, in my Apprehension, at all material. Nor can I think it decent, or perfectly consistent with his Lordship's known Candor, to connect the Downfall of Episcopacy with these Mixtures; unless they may be presumed to have arisen from a Dislike to Episcopal Government, or to have paved the Way to the Downfall of it.

A Man must be an utter Stranger to our History, who can imagine there was any Disinclination towards Episcopacy in those, who were at the Head of our Ecclesiastical Affairs in the Year 1639. But it happen'd that a Practice, which hath fallen under his Lordship's Displeasure, began to take Place about that Time, *viz.* a few Years *before* the Downfall of Episcopal Jurisdiction in *England*: And so two Events, which have not the least Relation to each other in their Motives and Tendency, are connected by

by a significant (*i. e.*) whereby something seems to be insinuated which *must* not be *directly* affirmed. His Lordship says very truly, that the Downfall of Episcopacy *ensued* these Mixtures. I am therefore still to learn how they can be dated from that Event: The Device of dating a Rule of Practice from an Event, which followed it at the Distance of some Years, is new to me.

Besides, Episcopacy indeed fell, but it soon revived; and yet those Mixtures, which his Lordship instructs us to date from the *Downfall of Episcopacy*, continue to this Day; and are likely to continue, unless a better *Expedient* can be found out, than that his Lordship proposeth. It is, *that upon* P. 22.

Appeals to the King, the Cause, if it be a Matter of Weight, shall be finally heard by the Convocation; or otherwise, by three or four Bishops, to be nominated for that Purpose by the King. It may be proper to acquaint my Readers, that the Passages cited by his Lordship from the *Reformatio Legum*, &c. "are, as his Lordship saith, graft-

" ed into his Commentary as CANDIDATES P. 14.
" for a Place in our Constitution, *in Case*
" the CONVOCATION shall think them de-

" serving." This *Expedient* is one of those P. 22.
Citations; and therefore must be esteemed C. 1082.

a *Candidate* recommended by his Lordship to the Favour of the Convocation. It happens unfortunately for these *Candidates*,
that

that his Lordship hath chosen a Patron for them, which cannot introduce them into our Constitution, while a certain *peremptory* Act of Parliament, I mean the *Act of Submission*, stands in the Way. But I will not anticipate what will come more properly under the Head of our Ecclesiastical Legislature.—

In the mean time it is fit we examine the Scheme; which in short is, that the Convocation, or at least a Committee of Bishops shall be the ultimate Judges in all Ecclesiastical Causes. Is it proposed, that the Convocation shall be always kept sitting, in order to receive Appeals? Or shall it be called as often as the Business of Appeals requires it? Or shall its Sessions at least keep Pace with the Sessions of Parliament? which Way soever we take, I fear the Clergy will soon complain of *the intolerable Burden of Appeals*. 'Tis owing to the Wisdom of the Administration, and its tender Regard for the Clergy, that their Attendance in Convocation hath been so happily dispensed with for some Years past. One would therefore reasonably hope, that no Friend the Church hath will propose a Change in the Constitution, which will render his Majesty's Indulgence to the Clergy in this Respect, altogether fruitless. There is, indeed, another Part of the Scheme, which is not liable to the same Objection: And possibly the Name of the *Convocation* might

might be made use of, in order to countenance an Alteration in the Law, which it was easy to foresee would terminate in what was *principally*, if not *solely*, intended, *the making a Committee of Bishops the ultimate Judges on Appeals.*

I remember, about twenty Years ago, when a second *Restoration* was talked of as a possible Thing, it was reported that the *Pretender* had been prevailed upon by *Lesley*, to offer a Temper with regard to the Supremacy, from which great Effects were expected. It was, that if the People of *England* would restore him to, what he calls, the Throne of his Ancestors, He, in Return, would part with the *Supremacy*, the great Stumbling-Block to Papists and High Churchmen. And, lest the latter should entertain a Jealousy, that a Bigot to the *Romish* Faith might think of restoring the *Supremacy* to that *See*, as *Queen Mary* did; they had assurances from their *Agent*, that it should be vested in a Committee of the *English* Clergy; whereof the Archbishop of *Canterbury*, for the Time being, to be always one. This, I remember, was talked of, as Part of *Lesley's* Scheme, for reconciling our High Churchmen to his Pupil. Whether there was any Foundation for the Report, or no, I will not take upon me to say: But, I confess, the Scheme his Lordship hath here adopted and recommended,

mended, with what immediately follows it, brought the Story fresh to my Mind.

P. 22.

For his Lordship, having mentioned the *Expedient* proposed by the *Reformatio Legum*, &c. proceeds; " To these Corollaries, — which relate to the judicial Administration of spiritual Matters, as properly belonging to the Spirituality, in Subordination to the King, as supreme Head; I will add one more, which (tho' not judicial) seems naturally to arise from that Knowledge, Sufficiency, and Integrity of the Body spiritual, mentioned in the said Statute (24. Henry VIII.) viz. that as in Matters judicial, so also in Matters prudential, they (the Spirituality) are the most proper Assistants to the Prince in the Administration of ALL Affairs, which concern SPIRITUAL PERSONS AND SPIRITUAL THINGS. And the Observation of my Lord Coke (that this Kingdom hath been best governed, when the Temporality and Spirituality have kept within their respective Bounds as to Judicial Administration) holds equally with regard to Administration of other Kinds: That is, all Work, of what Kind soever, is most like to prosper in such Hands, as understand it best, and have it most at Heart. A Suggestion which is not made here with Regard to the State of Things at any particular Time, (for to speak Truth, There are few Times wherein the Church

" Church has not been a Sufferer in this
 " Way) but upon a Presumption, which is
 " too well grounded both in Reason and
 " Experience, that when Ecclesiastical Af-
 " fairs are under the Disposition and Influ-
 " ence of Temporal Ministers, they will
 " be always manag'd in Subservience to
 " Temporal Ends, far more than to the
 " Ends of Religion and the real Benefit
 " of God's Church." — A very small Ac-
 quaintance with Ecclesiastical History, will
 convince us, that the sacred Names of Re-
 ligion and the Church of God, have been
 prostituted to the worst of Purposes. The
 Ambition, Avarice, and unrelenting Cruel-
 ty of the *Romish* Clergy, shelter'd them-
 selves from the Observation of the well-
 meaning, but misguided Laity, under these
 and the like venerable Sounds. Were
 Princes, who endeavour'd to deliver them-
 selves and their Subjects from *Sacerdotal*
Bondage, to be hunted down as Beasts of
 Prey? They have been pronounced *ex*
Cathedrà, *Rebels to God and his Church*.
 Was the Wealth of Kingdoms to be spent
 in the Riot and Luxury of the Religious
 Orders? Donations to that End were stiled
Gifts to God and his Church. Have Mul-
 titudes of humble, modest and inoffensive
 Christians fallen under the Displeasure of
 the Priesthood? The Rogueries of the *Inqui-*
sition, the Devastations of the *Crusade*, and
 the Terrors of a *Midnight Massacre*, have
 F been

been thought to promote the Ends of Religion, and the Interest of the Church of God. Thus hath the Lust of Power, supported by Fraud, Rapine and Bloodshed, been render'd familiar to the Consciences of Mankind, by the mere Abuse of Words of sacred Import. His Lordship is sensible of this Truth; and, I doubt not, reflects on these gross and awakening Instances of it, with an Indignation becoming a Gentleman and a Christian. But he will permit me to say, that when the Words *Religion* and the *Church of God*, and the like, are made use of to establish a *Monopoly* of Power in the Clergy, the Abuse of them is the same *in Kind*, though not in Degree and in its Consequences, as in the Instances I have mentioned. If I understand his Lordship, he is apprehensive, that the Interests of Religion and the Church of God are not likely to be effectually promoted, until the whole Administration (under the King) of Ecclesiastical Affairs is intrusted with the Clergy. He had before enter'd his Claim in Behalf of the Church, to the whole *Judicial* Administration of Spiritual Affairs under the King: Here he backs it with another with regard to the *Prudential*, and declares the Extent of both. It extends to ALL *Affairs which concern spiritual Persons and spiritual Things*. A very large Portion of Power! too great to be parted with *lightly* by those of the *Laiety*, who have

have the Honour to be admitted into his Majesty's most secret Councils. They know full well, that the Interest and Concerns of Persons and Things, commonly call'd Spiritual, are too closely blended with our Civil Affairs, and have too sensible an Influence on the Whole, to be hastily *canton'd* out to the Clergy. It is not easy to foresee all the Consequences of his Lordship's Scheme; or to take in the whole Extent of Power, the *Spiritual Vicegerency* would acquire by it: But this is certain, it must create a Clashing of Interests, and a Distraction of Councils at the Helm; the sure Indications of a weak, distemper'd Administration, and the ordinary Forerunners of its Dissolution.

There are two Branches of Power (to mention no more) included in the Management of Spiritual Persons and Spiritual Things, which, in our Circumstances, cannot be detach'd from the Civil Administration, without reducing it to a State of absolute Dependence on the Clergy. These are, the Power of calling, proroguing, or dissolving the *Convocation*, with the *Negative* the Crown hath on its Proceedings; and the Nomination to all Spiritual Promotions in the Gift of the Crown, particularly to the vacant Sees. The Affair of the Convocation will be considered in its proper Place. As to the other, it may be sufficient to say, that the Nomination to the vacant Sees, *is the Power*

of filling up twenty six Vacancies in the House of Lords. A Peerage, with a suitable Revenue, and great Dependencies, are undoubtedly *Temporal* Emoluments, though annex'd to a *Spiritual* Office. And therefore, as soon as the Nation began to shake off the Fetters of Popery, the Crown was restored to its ancient Right of conferring Bishopricks. Not indeed in the original Method, *the bare Delivery of the Ring and Pastoral Staff*; but in a Method altogether as discretionary on the Part of the Crown, though I fear not quite so reputable to the Church. The Temporal Rights and Emoluments annex'd to Bishopricks, (particularly that of a Seat in the House of Lords) are so capable of being employed to the Welfare or Detriment of the Community, that the Clergy of our Reformed Church have not yet had the Hardiness to claim the Disposal of them *in direct Terms*. But what hath been thought too much to be *avowedly* insisted on, is certainly included in the general Claim his Lordship makes in Behalf of the Church: Unless he would be understood, not to include Bishops and Bishopricks, under the Notion of *Spiritual* Persons and *Spiritual* Things.

But why is the Civil Administration judg'd unfit for the Care of *Spiritual* Persons and *Spiritual* Things? Because, says his Lordship,
 22. " It is a Presumption too well ground-
 " ed, both in *Reason and Experience*, that
 " when

“ when Ecclesiastical Affairs are under the
 “ Disposition and Influence of Temporal
 “ Ministers, they will be ALWAYS *managed*
 “ *in Subservience to Temporal Ends, far*
 “ *more than to the Ends of Religion and*
 “ *the real Benefit of God's Church.*” If
 by Temporal Ends, I may be permitted to
 understand, *The Good of the Community;*
That, without Doubt, is very consistent
 with all the Ends of Religion. It is it self
 one of the principal Ends of Religion; and
 always conduceth to the real Benefit of God's
 Church: Though I fear *Enthusiasts* have
 generally thought otherwise.

If by Temporal Ends, his Lordship under-
 stands Ends inconsistent with Religion, and
 detrimental to the Church of God; he will
 be pleased to inform us, upon what Reasons,
 and from what Experience, a Presumption
 so injurious to the Civil Administration is
 entertain'd. His Lordship's Reason for in-
 grossing the sole Disposal and Influence in
 Matters call'd Spiritual, is, That “ all Work, P. 22.
 “ of what Kind soever, is most like to pro-
 “ sper in such Hands, as understand it best,
 “ and have it most at Heart.” The Principle
 is certainly true, but the Fallacy lies in the
 Application: Where his Lordship seems to
 take a Fact for granted, which will not be
 hastily admitted. For however *Churchmen*
 may conceive or affirm, concerning their
 own superior Integrity and Sufficiency for
 Government, they must be content to be
 told,

told, that the Laiety expect something more from them than *confident* Assertions, in a Point of this Importance.

Experience seems to be a tolerable Guide in the Case; and his Lordship himself hath appealed to it. But here again, the Reader must content himself with a round Affirmation, that Experience is on his Lordship's Side: The Historical Facts, the proper Basis on which Experience is built, are wholly omitted by him. Facts are stubborn Things, which will not bend to any Schemes of Power. His Lordship hath made himself accountable for none of them. But since he hath been pleased to appeal to Experience, it would have been some Satisfaction to his Readers to have been, at least, directed to what Part of our History they should confine their Enquiry: Whether the Experience of the Times preceding our Reformation, or the Transactions at and since that Period, are principally rely'd on. Before the Reformation the Clergy enjoy'd a fulness of Power; they even *surfeited on it, till they disgorg'd it*: Were the Ends of Religion, and the real Benefit of God's Church, promoted under *their* Administration? They were not. But the Reformation came, and set all Things right. I believe it will appear, that the great Work of the *Reformation* was chiefly conducted by Lay Counsels, *in Opposition to the Clergy*. The Ruling Clergy (I mean a very great Majority of them) comply'd
indeed

indeed with all the Changes, all the *contradictory* Schemes of Religion, which a frequent and abrupt Change of Counsels, under *Henry VIII. Edward VI. and Queen Mary*, made Way for. But they were active in none of the Changes, except in the Restoration of Popery under *Queen Mary*, and in the Cruelties of her Reign. The *Act of Uniformity*, a Law very conducive to the Ends of Religion, had not the least Countenance from *them*: The *Convocation* then sitting, declar'd for the Old Religion; and every Bishop present in the Lords House, at the third Reading of the Act, protested against it. What a Condition had this Church and Nation been in, if his Lordship's Reasoning, grounded on the superior Knowledge, Sufficiency and Integrity of the Body Spiritual, had been regarded at that critical Juncture! But happily for us, the Queen and her Ministry were not amused with a Pomp of Words: Nor were they intimidated, when they saw all the Spiritual Governors of the Church, except one, *Landaff*. (and he a Protester too) resign, and retire to their Beads. They soon provided for the Church another Set of Spiritual Governors: Who, to speak the Truth, seem rather to have comply'd with the Ecclesiastical Establishment as they found Things settled to thir Hands, than to have had any great Share in the Work: Since 'tis plain, they could not prevail for the Omission of

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a few Ceremonies, which gave Offence to weak Brethren; and which themselves wish'd to see abolish'd: As appears from some very strong Passages to that Purpose, in their Letters publish'd by Dr. Burnet; which I cannot stay to repeat.

In this Instance, at least, Experience is against his Lordship's Rule, *that the Clergy are the most proper Assistants to the Prince in the Administration of ALL Affairs that concern Spiritual Persons and Spiritual Things.* The Reformation, which nearly concern'd both, was happily conducted by other Counsels. And if on the other Hand, we turn our Thoughts to the Times since the Reformation, wherein his Lordship's Scheme took Place, perhaps the Experience of those Times may further convince us of the Weakness of the Scheme. It will not be deny'd, that our Ecclesiastical Affairs were under a meer Clerical Administration, from the Year 1628 to the Meeting of the Long Parliament. A Period remarkably infamous for a Series of weak, angry, ill-concerted Measures: Measures, calculated to beget in weak Minds a Veneration towards the Hierarchy; but executed with a *Pedantick* Severity, which produced a quite contrary Effect. Certain Enthusiastick Conceits concerning the External Beauties of Religion, and the Necessity of a general Uniformity in the business of *Holy Garments, Holy Seasons, significant Gestures, Church Utensils and Ornaments,*

ments, seem to have been the ruling Principles of those Times. These filled the Goals with *Church Criminals*, and sent Thousands of our most useful Hands to seek their Bread in foreign Parts. Through the Influence these Principles had on our *Spiritual* Governors, multitudes of learned and conscientious Preachers were silenced; and exposed at once to the two greatest Trials which can befall human Nature, *publick Infamy, and remediless Want*. These Principles alone, and a Conduct on our Part suited to them, broke our Union with the *Reformed Churches* abroad, and fomented a War in *Scotland*: Which, together with a general Alienation of Affections at Home, occasion'd in great Measure by a rigorous Exercise of Ecclesiastical Discipline, prepar'd Things for that Scene of Misery, which ended in the Ruin of our Constitution. These were the Effects of an Administration purely Sacerdotal, in matters commonly called Spiritual! And though his Lordship is pleas'd to say, *that there are few Times in which the Church hath not been a Sufferer under a different Management*; I believe it would puzzle a wise Man to shew, wherein the Church hath been a greater Sufferer, than in the Effects of LAUD'S *Administration*; which takes in the whole Period I have mentioned. For though he did not get to *Canterbury* till the Year 1633. he was, notwithstanding, *Prime Minister* for

for Ecclesiastical Affairs, from the Moment
 An. 1628. he was advanced to the See of *London*.

The *ultimate* Cognizance of all Ecclesiastical Causes, and the *sole prudential* Administration under the King, of all Affairs which concern Spiritual Persons and Spiritual Things, are Points so nearly ally'd, that I was tempted to consider them together in this Place; though perhaps a little out of Method. For there is a Point of Jurisdiction claimed by his Lordship in Behalf of the Clergy, which yet remains to be consider'd: It is no less than the *Detection and Punishment of all manner of Vice*. This, in his Lordship's Judgment, is the *proper Province of the Spirituality*; a Work *most likely to succeed in their Hands, and most likely to be pursued by them*: A Work, which the general Frame of our Constitution hath assigned to *spiritual Hands*; and which more especially belongs to the *Church*. It hath sometimes fallen in my Way, to attend the publick Administration of Justice, at our Courts of *Goal-Delivery* and *Quarter Sessions*: And it hath been a sensible Pleasure to me to observe, that those solemn Meetings are constantly open'd with his Majesty's Proclamation, exhorting and requiring all Civil Magistrates, to use their utmost Diligence for answering his Majesty's most pious Intentions expressed in the Proclamation: And in general, to put the Laws in Execution against *all manner of*

P. 30.
 P. 31.

Vice, Immorality and Profaneness. This, I say, hath often given me a sensible Pleasure: And I doubt not, I am now speaking the Sentiments of many good Men. But we are to rely on his Lordship's Judgment, we have been taking Pleasure, in what ought to have given us quite contrary Sentiments. For in his Lordship's Scheme, the Laws empowering the Civil Magistrate to punish Vice, have rather defeated, than promoted, the Ends they were intended to serve. Nay, I doubt his Lordship must admit on his own Principles, that *his Majesty's* zeal for Reformation, expressed in his Proclamation, *hath not been according to Knowledge.* For though his Lordship hath no Objection to Statutes made for the Punishment of Vice by Temporal Penalties, while they are consider'd only as Provisions *in Aid of the Ecclesiastical Power*; yet, says he, "If the Helps which the Temporal Legislature affords the Church, happen to be unnecessary, or to be apply'd in an undue Manner, they do not only do no Service, but a manifest Disservice to the Church; by taking the *Suppression of Vice* out of the Hands of the Spirituality, (whose proper Province it is, and who are most like to pursue it,) and putting it into the Hands of the Laity." — "The Correction of Vice, and of other Defects and Irregularities of a Spiritual Nature, is most like to succeed in those Hands, to which the
 " general

Bishop of
Litchfield's
Charge.

" general Frame of our Constitution has
 " assigned it, *that is, in Spiritual Hands*;
 " And as to temporal Penalties, the ONLY
 " way to make them truly beneficial to
 " Religion, is to provide them, *as a fur-*
 " *ther Terror and Punishment, to be CALL'd*
 " IN AS OFT AS *the Censures of the Church*
 " *are disobey'd.*" The whole Passage is to
 the same Purpose, and is too remarkable
 to be passed over slightly, either in Justice
 to his Lordship, or to those who have been
 lately taught to regard the *Codex* as the
best Book that hath been written on our
Ecclesiastical Constitution since the Refor-
mation. But as I shall have Occasion to
 quote the Passage more largely, when I come
 to shew, how far the Doctrine advanced in it
 derogates from the Honour of the Legis-
 lature, I shall for the present content my-
 self with this short Extract from it.

In the mean Time, what is there in the
 Nature of Things, which renders the Sup-
 pression of Vice and Profaneness, a Work
 unfit for Lay Hands? Or whence is it, that
 it becomes the proper Province of the Spiritu-
 alty? For my Part, I have always consider'd
 the Civil Magistrate as *the higher Power*
who beareth not the Sword in vain; who
is a Terror to evil Doers, the Minister
of God to execute Vengeance on them
that do evil. Will his Lordship be pleas'd
 to convince me of my Mistake; will he
 shew me how the Case is altered since the
 Apostle

Apostle's Days; how that, which was the Duty of Heathen Princes, is become a Work unfit for Christian Magistrates? His Lordship hath not, indeed, totally shut the Civil Magistrate out from all Concern in the Suppression of Vice; but the Terms on which he is admitted to bear a Part in the Work, are, if possible, more dishonourable to him, than a total Exclusion: For, in his Lordship's Judgment, the *only* way to make Temporal Penalties beneficial to Religion, is to provide them as a further Terror and Punishment, to *be called in* as oft as the *Censures of the Church are disobeyed*. In other Words, the Civil Magistrate, who ought to have no *original* Jurisdiction in the Punishment of Vice, no Cognizance of the Crime, ought however to be always ready at the *Church's Call*, to punish those whom she condemns.

I doubt his Lordship's Zeal, in the Cause of Virtue, hath betrayed him into an Inconvenience he did not foresee. For are Temporal Penalties to be called in *as oft* as the Censures of the Church are disobey'd? Suppose then, (the Supposition is not very extravagant) that Spiritual Censures should happen to be inflicted upon improper Motives, or without Grounds; is the Magistrate, *without Examination*, to lend his Aid to enforce them? I hope not; for that would be making the Reverend Judges no better than the *Church's Hangmen*. Their

Lordships will pardon the *Coarseness* of the Expression.— But the Case is certainly so. If they were bound to inflict Temporal Penalties, in consequence of Church-Censures, without examining whether the Church hath exceeded or abused her Jurisdiction, the Church would be, to all Intents and Purposes, the *sole Judge*, and their Lordships *mere Executioners* in the Case. As Drudgery, the Legislature will never impose upon them. On the other hand, If a Right be reserved to the Judges, of entering into the Merits of the Cause, before they proceed to Punishment, I doubt his Lordship's Scheme will fall to the Ground. For then Temporal Penalties ought not to be called in, AS OFT as Spiritual Censures are disobey'd; unless it be likewise Part of the Scheme, that spiritual Censures shall be constantly inflicted on proper Grounds; or that the Spiritual Judge (who after all is frequently a Layman) shall be infallible and impeccable.

It may not be amiss to observe as we go on, that every Argument of his Lordship, for the Extension of Ecclesiastical Jurisdiction, is grounded on the different Views, Employments and Abilities of the Clergy and Laiety. *The good Work of Reformation is the proper Province of the Clergy; the superior Knowledge and Experience of the Body Spiritual, in Ecclesiastical Matters, are insisted on to shew the Inconvenience*

ence of the modern Mixture of Spiritual and Temporal Judges in the Court of Delegates.

It is represented as a Reproach cast on P. 25. the Church, by her Enemies, that she administers her Government and Discipline by the Hands of Laymen, which his Lordship assures us is merely accidental. But it seems to have escaped his Lordship, that it is likewise purely accidental, and not owing to the Constitution of the Church, that her Government and Discipline, as far as it is administred in the Spiritual Courts, is not *always administred by Lay Hands*; Hands, in his Lordship's Opinion, utterly unfit for the Work. Ecclesiastical Jurisdiction, as exercised in the Spiritual Courts, is administred by the Hands of *Chancellors, Officials, or Surrogates*, who frequently are, and by express Provision of Law ^{37. H. 2.} always may be, Laymen. How then is it said, that the Correction of Vice is, by the general Tenor and Frame of our Constitution, assigned to Spiritual Hands? And why may not that Jurisdiction be as effectually administer'd by Lay Magistrates, under the Direction of *Acts of Parliament*, as by Lay Chancellors, &c. under the Authority, and by the Methods of the *Canon Law*?

I begin indeed to suspect, that the Grievance at the Bottom, is not so much that Laymen have Jurisdiction in the Case, as that it is put into a Course of Trial, better suited to the Genius of a free Government:
Because

Because I find his Lordship complaining in very tragical Terms, of the abolishing the *wholsome Discipline of Canonical Purgation*; which in short was thus: Persons accused upon common Fame, were, upon this Accusation alone, unsupported by any Evidence, cited to appear in the Spiritual Court, and there charged with the Crime: If they deny'd the Charge, the Judge assigned them a Day to appear, with five or six of their Neighbours (who were called *Compurgators*,) and to make *Purgation*; which was done by the *Defendant's* swearing to his own Innocence, and the *Compurgators* swearing that they believed what he had sworn to be true. If the *Defendant* refused to purge himself on his own Oath, or could not procure *Compurgators* to swear, as before, for him, he was looked upon as convict, and the Judge proceeded to Sentence, in the same Manner as if he had been convicted by his own Confession, or upon Evidence.

C. 1089.

His Lordship speaking of this Proceeding, which he is pleased to call a *wholsome Discipline*, says, "Where the Life and
 " Conversation of any Person has drawn
 " upon him such a strong and general Presumption of Guilt, that tho' he swears
 " himself innocent, six or seven Persons
 " cannot be found in a whole Parish, who
 " believe he swears true, such a one seems
 " to be fully ripe for the Shame and Scandal
 " dal

" dal of publick Penance. I shall not make
 " any Observation upon the Time when *this* ^{16 Car. 1.}
 " *important Branch of Ecclesiastical Disci-* ^{13 Car. 2.}
 " *pline* was abolished; nor take upon me
 " to say, how much the Loss of it has con-
 " tributed to that unusual Boldness and
 " Openness, with which Lewdness and
 " other Immoralities have since reigned,
 " and do still reign, in this Nation: But this
 " I may venture to affirm, that it cannot but
 " be Matter of Grief to all good Men, to
 " all who are Lovers of Virtue and Reli-
 " gion, and have a Concern for the Honour
 " of God, to see the Church (to which
 " the Suppression of Vice more especially
 " belongs, and in whose Hands the Work
 " is most likely to prosper) *thus restrained*
 " *and fettered in the Exercise of her Disci-*
 " *pline.*"

I am really surpriz'd his Lordship doth
 not see the Injustice and Absurdity of this
 Proceeding; which carried the Ecclesiastical
 Jurisdiction to a Pitch of Tyranny, even
 beyond the Oath, commonly called the *Oath*
Ex Officio. The bare obliging a Man to ac-
 cuse himself, or to answer upon Oath in
 a Criminal Process, is contrary to natural
 Justice, and to the Equity and Moderation
 of all Laws, except only the Canon Law.
 It is acting the part, not of a vigilant and
 prudent Magistrate; but of an *Inquisitor*;
 a little mischievous Animal, who is perpe-
 tually upon the Hunt after Crimes, for the

G

unmanly

16. Car. 2. c.
11.

unmanly Pleasure of Correction : It is laying People under a grievous Temptation to Perjury ; and hath doubtless betray'd thousands into the terrible Circumstance of covering one Offence by a greater. For these Reasons, among others, the *Oath Ex Officio* was abrogated, after the Nation had seen some of the mischievous Effects of it, in the Case of the poor *Puritans*. But the important Branch of Ecclesiastical Discipline, which his Lordship mourns over, in the Passage I have cited, carried with it all the Hardship, all the Temptation to Perjury, which attended the other Proceeding ; with this further Circumstance of Folly and Injustice, that an innocent Man was liable to be punished, for not doing what was out of his Power to do. The *Defendant*, upon the Day given for *Purgation*, was to appear with his *Compurgators*, who should swear, &c. Suppose the *Compurgators* will not appear,—Had the *Defendant* any Method to compel them ? Or suppose when they appear, they will not swear *that they believe the Defendant innocent* ;—surely they could not be compelled to *that*. His Lordship thinks, that when a Man's Conversation hath drawn on him so general a Suspicion of Guilt, that tho' he swears to his Innocence, six or seven Persons cannot be found in a whole Parish, *who believe* he swears true ; such a Person seems ripe for the Shame and Scandal of publick Penance. But his Lordship

Lordship very well knows, that innocent Persons may be, and frequently have been, *for a time*, under a very general Suspicion of Guilt; so that perhaps they have not been able to find a sufficient Number, who *could*, with a clear Conscience, swear they believed them innocent. This, of it self, is a Circumstance of sore Distress to a good Man; and as this may, and frequently hath been the Case, is it fit that a Mind already over-laden, should be exercised with the fresh Anguish of an unrighteous Sentence, attended with publick Infamy? I am confident his Lordship will not pronounce this Case ripe for the Shame and Scandal of publick *Penance*. Besides, his Lordship doth not seem to consider, that the Point is not, whether six or seven Persons can be found *who believe* the Defendant innocent, but whether so many can be found *who will SWEAR to their Belief*. The Difference of the two Cases is visible; and those who have had the Misfortune to fall under a popular Suspicion (how groundless soever,) have severely felt it. It requires a Degree of Courage and Virtue, not ordinarily to be met with, to be able publickly and effectually to assert the Cause of injured Innocence, against the Tide and Cry of the Times. But if Fear and prudential Motives did not work at all in the Case, Ill-nature alone will frequently be sufficient to keep People from appearing in behalf of Persons under Prosecutions of this Kind.

A Man may, by a laudable Action *misunderstood*, draw upon himself so general an Odi-um, that the World may be tempted to take an unmanly Pleasure in seeing him humbled at any Rate.

These Considerations, not to mention the Guilt of Perjury, which the *Compurgators*, as well as *Defendants*, were too frequently led into, are sufficient to justify the Wisdom and Equity of the Legislature, in disarming the Church of this *Engine of Canonical Oppression*. I call it so, because it appears to me to be an exorbitant Stretch of Power, introduced in the corruptest Ages of the Church; conducing neither to the proper Discovery of Guilt, nor to the Protection of Innocence. His Lordship, in the Account he gives of it, doth not, I confess, suppose the Case of an innocent Person's falling under the Rigour of this important Branch of Ecclesiastical Discipline. But with great Submission, the Case of injured Innocence, as well as that of real Guilt, ought to be taken into the Account, in every Scheme we offer for the Administration of Justice; otherwise indifferent Men will be tempted to suspect, we are more concerned to make our *Power felt*, than to render it beneficial to Mankind.

I am indeed sorry to say, that the Enlargement of Church Power, with a rigorous Exercise of Ecclesiastical Discipline, seem to be the principal Ingredients, and
leading

leading Views of his Lordship's Scheme; otherwise I am at a Loss to account for the Uneasiness he discovers, when his Subject leads him to mention the undoubted Right of the Crown to pardon in Suits, called in the Language of the Canon Law, *Suits pro salute Animæ*. The Power of shewing Mercy, on proper Occasions, and to Objects worthy of it, hath been with great Propriety, called the *brightest Jewel in the British Crown*. It is certainly a Prerogative his Majesty exercises with the highest Pleasure; *a Pleasure, no Man who hath not felt what is meant by a FATHER'S LOVE, can fully comprehend*. It hath been adjudg'd in the Courts of Common Law, that this Prerogative extends to all Suits in the Spiritual Court, instituted *pro salute Animæ*; by which are meant, all Suits where the Punishment of the Defendant is the sole Object of the Suit, in Contra-distinction to such, wherein private Rights come in Question. His Lordship, speaking of this Distinction, between Civil and Criminal Suits, and of the Rule of Law grounded on it, says, "The Foundation they (the C. 1117.
 " Books of Common Law) go upon is,
 " that all Suits *pro salute Animæ*, tho' prosecuted by a Subject, are really for the
 " King, and may therefore be pardoned
 " by him: But *I hope they are for God too*,
 " and on that Account very fit not to be
 " pardon'd, but prosecuted and punished :
 " Nor

“ Nor can it be thought for the Honour
 “ of the Crown, to discharge Adulterers,
 “ Fornicators, &c. from the just Censures of
 “ the Church. — The Court (*in the Case*
 “ *there cited*) thought fit to extend the
 “ general Pardon to all Suits, which tho’
 “ *ad instantiam partis*, were prosecuted only
 “ to inflict Punishment on the Offenders,
 “ *pro salute Animæ*: An End, one would
 “ think, as worthy to be pursued *in a Chris-*
 “ *tian Country*, and to be freed from In-
 “ *terruptions of this Nature*, as Causes
 “ *that concern the Body or Estate.*” I have
 already taken notice of some of the Ef-
 fects, which Words of Religious Import,
skilfully thrown out in Debate, work upon
 the Imagination of unwary Readers. And
 indeed, I begin to doubt, whether Authors
 themselves do not sometimes fall under the
 common Delusion; for if I am not great-
 ly mistaken, his Lordship is in good earnest
 out of Humour. *He hopes* Suits in the
 Spiritual Court, *are for God too*, as well
 as the King, &c. He thinks the Good of
 Souls is an End as worthy to be regarded
 in a *Christian Country*, as Causes which con-
 cern Body and Estate. There is a certain
Tartness in these Periods, which betrays a
 thorough Impatience *rankling* at the Au-
 thor’s Heart: But if we could state the
 Case coolly to ourselves, and reflect, that
 the End of all criminal Prosecutions, whe-
 ther carried on in the Spiritual or Tem-
 poral

poral Courts, and of all Punishments (not capital) whether inflicted by one Jurisdiction or the other, is the same, *the Reformation of the Criminal, and for Example to others*; that both Jurisdications are united in, and flow from the Crown; and that the Prerogative of Pardoning is founded in the *Royal Supremacy* over both; that this Prerogative, if rightly conducted, is nothing more nor less than the dispensing with the Rigour of the Law, in Cases where Wisdom, Equity, and the Ends of Government require it: If we did, I say, reflect on these Things, we should not be tempted to be out of Humour, when his Majesty exercises his Prerogative in Causes cognizable, as well in the Ecclesiastical as the Temporal Courts. We should not, in this View of Things, be displeased that his Majesty sometimes extends this Grace and Goodness to Persons accused, or even convicted, of Adultery or Fornication; upon the same Motives of Equity and Wisdom, upon which he, at other Times, extends the same Grace and Goodness to Persons accused, or even convicted, of Treason or Felony. Are Criminal Prosecutions in the Spiritual Court for God? Prosecutions of the like kind, in the Temporal Courts are, in every intelligible and justifiable Sense of the Word, for God too. Civil Government is the Ordinance of God; Civil Magistrates are the Ministers of God; and

Justice temper'd with Mercy, is a principal Part of the moral Character of God. Are Suits and Punishments in the Spiritual Court for the Good of Souls? Prosecutions in the Temporal Courts, if rightly conducted, are, directed to the same End; the Reformation of the Offenders, and for preventing the like Crimes in others. Where then is the Difference, or why is the Grace of the Crown towards Church Criminals *only* represented as an Interruption to the Course of Justice, unbecoming a Christian Country? Whence, I say, arises it, that the Spiritual Judge alone hath a Right to be very angry, when he finds his Arm stopped by the Royal Grace, so that he cannot have his *full Blow* at the poor Delinquent?

The Reader observes, that his Lordship having mentioned *Adultery* and *Fornication*, as Enormities not to be discharged from the Censures of the Church, concludes with an *Ec.* which, for ought appears to the contrary, may include all other Crimes whatsoever: Not only Enormities of the like Kind with those enumerated, nor those only which by the Laws in being are cognizable in the Spiritual Court, but Offences of every Kind, and in every Degree, from *Petty Larceny* to *High-Treason*. As to those Crimes which the Law hath made Capital, I think I do not wrong his Lordship, in supposing he wisheth to see the Church intitled to a Cognizance of *them*.

them, in order to the Exercise of Spiritual Discipline; even after his Majesty hath, in his great Wisdom and Clemency, vouchsafed his Pardon to them. Delinquents, who, by the Grace of the Crown, have escaped the *Sword of Justice*, must, in his Lordship's Scheme, make their Peace with the Church, or feel the *Rod of her Discipline*. My Readers will be pleased to remember, that the Citations from the *Reformatio Legum* "are ingrafted into the *Codex*, as *Candidates* P. 14.
 "for a Place in our Constitution, in case
 "the Convocation shall think them deserving." His Lordship hath favoured us with a Citation from that Book, upon the Subject under Consideration. "*Cum Civilis* C. 1078.
 "*Magistratus aliquis, flagitiosos Homines,*
 "adhuc non Excommunicatos, *præoccu-*
 "*pârit & in Carcerem abduxerit; hi si*
 "*post sententiam Mortis acceperint, & nos*
 "*illis postea pepercerimus, nolumus tamen*
 "*indulgentiâ nostrâ Ecclesiæ Disciplinam*
 "*impediri. Iudex igitur Ecclesiasticus,*
 "*illos Satisfactionis & reliquorum officiorum*
 "*commonefaciat; quæ, si non omnia ritè*
 "*perficiant, Excommunicationis virgâ tan-*
 "*tisper flagellentur, donec salubriores Cogi-*
 "*tationes susceperint.*"

Since his Lordship hath been pleased to adopt and recommend this Method of dealing with Offenders after Conviction and Pardon, it will not, I hope, be esteemed an unreasonable Scruple to ask, Upon what
 Grounds

Grounds shall the Church proceed in her Censures; shall she proceed to Excommunication; shall *she deliver the Party over to Satan*, upon the bare Credit of the former Conviction? Perhaps *that* was owing to Mistake or Surprize, or to an over-rigorous straining Matters in Point of Law or Evidence. This hath frequently been the Case; and wherever it hath appeared to have been so, the Royal Grace hath interposed *Ex debito Justitiæ*, to prevent the Execution of a hasty or unrighteous Sentence. Or shall the Ecclesiastical Judge, before he proceeds to Admonition and Excommunication, re-examine the Merits of the Cause, and enter into every Circumstance of Fact, and every Point of Law (Common and Statute Law) necessary to the forming a right Judgment of the Case; and upon the whole, acquit or condemn as he shall see reasonable? This, I doubt, would be laying a Burden on the Judge, which he is no ways equal to: It would certainly be giving a Jurisdiction to him, which the best of our Popish Canonists utterly disclaimed, and would, in effect, be setting the Canon above the Common and Statute Law.

*Innocent De
foro compet.
circumspecte
agatis. V.
Mortale pec-
catum.*

There is no Maxim in Law better established, than that the Ecclesiastical Court hath no Cognizance, no Manner of Jurisdiction in Treason or Felony. His Lordship himself admits the Principle, but offers a Scheme to the Consideration of the Convocation,

ation, which, were it to take Effect, would
 utterly enervate it. And, indeed, he ap-
 pears to me very unwilling wholly to give
 up the Power of the Church for Correc-
 tion and Discipline, in case of Felony, *even*
upon the Foot of our present Constitution.
 For having mentioned some Cases, where
 the same Matters may be cognizable by Spi-
 ritual and Temporal Judges, *for different* C. 1077,
1078.
Ends, he adds, *that even in Capital Cases*
this Rule is not wholly excluded. This Prin-
 ciple his Lordship grounds on a hasty extra-
 judicial Opinion of my Lord Chief Justice
 Hobart, in the Case of one Searle, a Clergy-Hob. 121.
 man, convicted of Manslaughter: And upon
 a very indigested Report of the same Case
 in *Cro. James*; in which it was held, on Cro. James
430. Searle's
Case.
 Motion for a Prohibition, " That a Clergy-
 man convicted of Manslaughter, and al-
 lowed his Clergy, might be proceeded a-
 gainst in the Ecclesiastical Court, upon the
 Foot of that Conviction, in order to De-
 privation: And that a Sentence of De-
 privation, grounded on the Conviction,
 would be good." It is a Justice I owe
 the Readers of the *Codex*, to acquaint
 them, that *this Point was afterwards other-*
wise adjudged upon solemn Debate, in the
Case of this Searle. It is true the Court of
King's-Bench did, upon a sudden Motion
 for a Prohibition, refuse to grant it: But a
 Prohibition was afterwards brought, and de-
 clared upon in the *Common-Pleas*, and the
 Cause

Hob. 288.
Searle against
Williams.

Cause standing for Judgment of the Court, upon *Demurrer*, " Judgment, says the Book, " was given upon open Argument by all the " Judges for the Plaintiff, that he ought " not to be questioned now in the Spiritual " Court, for this Manslaughter.

Hobart, whose extrajudicial Opinion his Lordship hath cited, presided in the Court of *Common-Pleas*, at the time this Judgment was given; and not only concurred in it, but spends several Pages in debating the Point, and giving the Reasons the Court went upon. To corroborate their Opinion he cites a Case in Point, which was adjudged the same way in the Time of Queen *Elizabeth*. It was the Case of one *Nichols* a Clergyman, who had been convicted of *Felony*, and had his *Clergy*, but was prosecuted in the Ecclesiastical Court, in order to Deprivation. The Judgment in that Case was, " That after the Discharge " of a Clerk convict, he could not be " questioned for it in the Ecclesiastical " Court, as for an Offence to make the " Church void by Deprivation." *Searle's* Case is likewise reported by *Rolle*, and the Reasons upon which the Judgment was grounded, are sum'd up in this short Rule, " That by the Allowance of Clergy, according to the Statute, the Party is " purg'd and acquit of the *Felony*, and all " Penalties and Damages incident to it, " in nature of a Pardon." It is surprizing that

Rolle's Abr.
305 pl. 3.

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that his Lordship should advance a *new* and *very suspicious* Doctrine upon the single Authority of *Searle's Case*, without giving his Readers the least Intimation, that the Point of Law supposed to have been settled in that Case, *was afterwards overruled, in the very same Case, by all the Judges, upon solemn Argument, and Consideration of former Precedents.* If it should be asked how this could happen? — I will not presume to answer that Question; but this I will venture to say, the latter Resolution doth not appear to me to have escaped his Lordship's Observation, or to have slipped his Memory; since *Hobart's Argument, setting forth the Reasons of that Resolution, is cited in the Codex to different Purposes, no less than seven times:* C. 13, 1113,
1163, 1176,
1184,
C. 1113 And the Case is once referr'd to in the *Marginal*, as an Authority establishing the Rule laid down in *Cro. James, the very Principle it expressly and in direct Terms overthrows.*

An Author must be in a very uneasy Situation, when he *feels* himself confronted by the Authorities he appeals to: But the Case is still worse with him, when his own Doctrine is crossing him at every Turn. This Inconvenience, in both Parts of it, his Lordship seems to be under, in the Account he gives of the Authority of the Foreign Canon Law, and the Grounds on which it was received in *England* before
6 the

P. 28.

the Reformation. “ The Body of the Ca-
 “ non Law, consisting of the Canons of
 “ Councils, Decrees of Popes, and the like,
 “ obtained in *England* by *virtue of their own*
 “ *Authority*, in like manner as they did in
 “ other Parts of the Western Church, till
 “ *the Time of the Reformation; and from*
 “ *that Time have continued upon the Foot*
 “ *of Consent, Usage and Custom*: For which
 “ Distinction, we have no less a Warrant
 “ than an Act of Parliament, made at the
 “ very Time when those foreign Laws were
 “ declared to be *no longer* binding by their
 “ own Authority.”

The Distinction his Lordship speaks of
 is, that till the Reformation the Canons of
 foreign Councils, Decrees of Popes, and the
 like, were binding on the Subjects of *Eng-*
land, by Virtue of their own Authority; or,
 in other Words, upon the bare Authority of
 Popes and foreign Councils; but that by the
 25th of *Henry VIII.* they are declared to be
no longer binding in that Manner; and now,
 since that Act, stand upon the Foot of Con-
 sent, Custom and Usage only. I take it for
 granted, that wherever a Law binds by Vir-
 tue of its own Authority, or upon the Au-
 thority of the Legislature, it binds the Sub-
 ject universally; and is a Rule of Action in
 all Cases determined by it. But I can never
 admit, that the Canons of foreign Councils,
 and Decrees of Popes, did ever bind here
 in that Manner: Since there are number-
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less Cafes, in which they were never received
 in *England*; and, doubtless, the rejecting
 any of them, derogates as much from the
 Authority of the Legislators, as if the
 whole had been rejected. But let us con-
 sider the Act his Lordship hath cited to
 this Point. "Where this your Grace's ^{25 Hen. 3}
 " Realm recognizing no Superior under ^{c. 21.}
 " God, but only your Grace, *hath been*
 " and is free from Subjection to any Man's
 " Laws, but only to such as have been de-
 " vised, made and obtained *within this*
 " *Realm*, for the Wealth of the same; or
 " to *such other*, as by Sufferance of your
 " Grace, and your Progenitors, the People
 " of this your Realm have taken *at their*
 " *free Liberty, by their own Consent*, to
 " be used amongst them; and have bound
 " themselves, by long Use and Custom, to
 " the Observance of the same: Not as to
 " the Observance of the Laws of any foreign
 " Prince, Potentate or Prelate, *but as to*
 " *the customed and antient Laws of this*
 " *Realm, originally established as Laws of*
 " *the same, by the said Sufferance, Consent*
 " *and Custom, and NONE OTHERWISE.*"
 The Common Lawyers, for whom his
 Lordship, indeed, seems to have no great Re-
 gard, have likewise cited this Act, *but to a*
quite contrary Purpose. Let us examine,
 whether *they* or his Lordship have the best
 Title to it. His Lordship asserts, that fo-
 reign Canons and Papal Decrees did bind
 in

in England, by *Virtue of their own Authority*: The Act declares, that the Subjects of England, have been and are free from Subjection to all Laws, not made within the Realm, except such as by Sufferance of the Crown, they have taken at their *free Liberty*, and by their own Consent, to be used among them. His Lordship admits, that *from the Time of the Reformation*, indeed, foreign Canons and Papal Decrees stood upon the Foot of Custom and Consent: The Act saith, that they were originally established as Laws of the Realm, by Sufferance and Consent, and subsist by Custom, and not otherwise. His Lordship is of Opinion, that the Act declares them to be *no longer* binding by their own Authority; and grounds his Distinction between the Times before and since the Reformation, upon the Act. In what Clause of the Act doth his Lordship find this Distinction? Or where are they declared to be *no longer* binding by their own Authority? In my Judgment, the Act declares they were never binding in that Manner; never otherwise than as Laws originally introduced by the Sufferance of the Prince, and Consent of the People.

And yet this Act is the single Authority his Lordship hath been pleased to cite, in Maintenance of the Assertion, *that until the Time of the Reformation, the foreign Canon Law bound in England by virtue of its own*

own Authority. A Principle utterly indefensible; and, which is worse, undermined by his Lordship at the Time he was advancing it. For, in the very Page whence I have quoted it, his Lordship mentions several Cases in which the Canon Law had *not been accepted* in *England*, as being contrary to the Customs and Usages of the Kingdom: Among others, a *notable* Canon adjusting the *Size and Cut* of a Parson's Gown, with the true Canonical Cap, (a Matter strictly and properly of Ecclesiastical Cognizance;) which Constitution, not having been received in *England*, did not bind the Clergy of this Church. Thus, I say, his Lordship seems to me to have undermined his own Principle. If my Readers are not yet of that Opinion, they will have the Satisfaction of seeing it contradicted by his Lordship elsewhere, in *direct Terms*.

When the Point in View is to prove, that long Use and Custom, *without the Authority of Parliament*, is sufficient to graft the foreign Canon Law into the *English* Constitution, we are told, that "All the C. Tit. 41.
C. 1. v. Accepted or
Confirm'd.
" Books agree, that foreign Canons and
" Constitutions, *though not obligatory as*
" *such*, may well remain Laws to us; as
" having been long and generally received,
" allow'd and practis'd among us. —
" When Things of themselves do not ob- Ibid. v. Long
Use and
Custom.

N. B. The Pages are misnumber'd about this Part of the *Codex*; and therefore I chose to refer to the Titles and Chapters.

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“lige by the Authority of those that made
 “them; yet, being generally receiv’d and
 “allow’d, they *thereby* become Law to us.
 “—They (the foreign Canons) bind *not*
 “otherwise than as they are receiv’d and al-
 “low’d: But when they are allow’d, they
 “then become Part of our Law.—The
 “whole foreign Canon Law was not re-
 “ceiv’d in *England*, as appears by the fa-
 “mous Case of the Legitimation of Chil-
 “dren born before Marriage, &c.

Ibid. v. To
 such other.

His Lordship having mention’d divers fo-
 reign Canons, which, he says, never became
 Part of our Law, adds, “Some of which were
 “never allow’d in Practice; and others, *when*
 “attempted, were withstood and declar’d a-
 “gainst: Or though in Practice they might
 “prevail by the over-ruling Power of the Court
 “of Rome; yet they were all the while a-
 “gainst the known Laws of the Land, and
 “on that Account were never properly re-
 “ceiv’d among us.” So that, according to
 his Lordship, the foreign Canon Law once
 obtain’d in England, by *Virtue of its own Au-*
thority; and yet, great Part of that Law was
 never allow’d in Practice; and what was al-
 low’d was not obligatory as such, or by *Virtue*
 of the Authority of its Legislators, but as re-
 ceiv’d and allow’d, and *not otherwise*.

Ibid.

It being admitted, that the over-ruling
 Power of the Court of Rome hath intro-
 duced some Points into Practice, which yet
 never were properly receiv’d, or became
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Part of our Constitution; one would naturally infer, that Practice alone, especially in the Times before the Reformation, and in Points wherein this over-ruling Power may be supposed to have chiefly interposed, should not be sufficient to determine, what is, or is not, Part of our Ecclesiastical Constitution. Now, wherein is it so likely the over-ruling Power of the Court of *Rome* should exert itself, as in the Extension and Support of Ecclesiastical Authority? And yet his Lordship in the very next Page ^{*Ibid. v. As they were*} adviseth his Readers "To preserve and examine our Ecclesiastical Records, in Order to the Support of *Ecclesiastical Authority*; since from these, and *these alone* it can be made appear on all Occasions, that it (*Ecclesiastical Authority*) is entitled to the additional Strength of Common and Statute Law: *Both which do ultimately resolve into Practice.*" Nay, he frequently appeals to the *Practice of the Church*, as appearing on the publick Registers of the Episcopal Sees, *as well before as since the Reformation*, for the Proof of what he apprehends to be the Rights of the Church, in Opposition to the Judgments of *Westminster-Hall* to the contrary: Which Judgments, his Lordship supposeth would not have been given, "*had the Rights and Liberties of the Church been supported, by Accounts of the Practice of the Church.*" And ^{P. 124} thinks the Church is nearly concern'd for

P. 13. the Security of her *Just Rights*, to be able to support all her Claims by the Testimony of *Practice*. How are these Things reconcilable? Many Points have prevail'd in *Practice* by the over-ruling Power of the Court of *Rome*, which have never become Part of our Constitution: And yet both Common and Statute Law do *ultimately resolve into Practice*; though still the Judgments of *Westminster-Hall* have frequently gone against the ancient Practice of the Church. So that Practice is, and is not a Rule, whereby to ascertain the Church's Rights; or to determine how far Ecclesiastical Authority is entitled to the *additional Strength* of Common and Statute Law.

The *ADDITIONAL Strength of Common and Statute Law*, is an Expression which perhaps may carry an odd Sound to ordinary Readers. I am free to confess, that I, who have always esteemed Common and Statute Law as the best, if not the only Establishment on which any Authority can stand in *England*, was at first scandalized at the Expression; and was even tempted to question the Accuracy of it. But a further Acquaintance with his Lordship's Scheme of Ecclesiastical Power, clear'd up my Doubts upon that Head. The Authority of Common and Statute Law is, in his Lordship's Scheme, with great Propriety of Stile, call'd an *Additional Strength*. For when his Lordship comes to speak of Statute Law as Part of the

the Law of the Church, he says, " The^{P. 30.}
 " Statute Law, though RECKON'D *first in*
 " *Point of Authority, comes properly in*
 " *the last Place, when it is consider'd as*
 " *Part of the Ecclesiastical Law of the*
 " *Church of England: For as Canons were*
 " *made from Time to Time to supply the*
 " *Defects of the Common Law of the*
 " *Church, (viz. immemorial Ecclesiastical*
 " *Customs) so were Statutes added to en-*
 " *force both Common and Canon Law:*
 " *And they are therefore to be consider'd*
 " *as supplemental to both.— According-*
 " *ly, the greatest Part of the Statutes made*
 " *before the Reformation, which concern*
 " *the Church and Clergy, are directly level-*
 " *led against Violences committed upon their*
 " *Possessions or Persons by the Ministers of*
 " *the King; and against Incroachments of*
 " *the Temporal Courts upon the Spiritual*
 " *Jurisdiction. In like manner since the*
 " *Reformation, the State hath interposed*
 " *by many Acts for the better ordering of*
 " *the Possessions of the Church, and more*
 " *easy Recovery of her just Rights. And*
 " *whereas in the Administration of Disci-*
 " *pline and Correction of Vice, the Church*
 " *can go no further than Spiritual Censures,*
 " *in this Part also she hath been assisted*
 " *from the State by additional Temporal Pe-*
 " *nalties.— But if these additional Helps*
 " *are imposed when there is no need of them;*
 " *— or are given upon such Terms as*
 H 3 destroy

“ destroy or weaken the Ecclesiastical Juris-
 “ diction ; or transfer Business of a Spiritual
 “ Nature from Spiritual to Temporal Hands :
 “ in such Cases the Interpositions of the
 “ State either wholly cease to be real As-
 “ sistances to the Church ; or, at least, the Be-
 “ nefit which the Church might otherwise
 “ reap from them is greatly abated. *The*
 “ *Clergy themselves may well be presumed the*
 “ *best Judges what are the proper Methods*
 “ *for promoting Religion and the Interest of*
 “ *the Church in all Kinds ; how far their own*
 “ *Strength will carry them in that Way ;*
 “ *and when it is, that in order to those Ends,*
 “ *they need the Assistance of the State.* And
 “ therefore, the greatest Part of our anti-
 “ ent Laws in Favour of the Church and
 “ Clergy, were made upon *Special Petitions*
 “ *of the Clergy themselves,* to the King
 “ in Parliament. And we have already
 “ observ’d, that Queen *Elizabeth* thought
 “ it *no unreasonable* Message to the Com-
 “ mons in Parliament, (for we are now
 “ speaking on the foot of Reason only) *that*
 “ *no Bills concerning Religion should be pre-*
 “ *ferr’d or receiv’d there, unless the same*
 “ *should be first consider’d and lik’d by the*
 “ *Clergy.* It is evident from the several Mes-
 “ sages which came from the Court on that
 “ Occasion, that the Queen thought this a
 “ Point which nearly concern’d her own
 “ Supremacy. But the View with which I
 “ mention it here, is *not upon a Question of*
 “ *Law,*

" *Law, but of Expedience only; Whether*
 " *in Matters Spiritual, the Spirituality may*
 " *not be presum'd the most proper Judges*
 " *as of the Assistance which the Church re-*
 " *ally needs, and the several Degrees of it,*
 " *so of the Methods by which that Assi-*
 " *stance may be most effectually convey'd*
 " *and apply'd. In this Point the Consti-*
 " *tution of the Ecclesiastical Body is not*
 " *unlike the Constitution of the Body Na-*
 " *tural; in the Care of which its own*
 " *Strength is to be try'd in the first Place;*
 " *and when it appears that Nature cannot*
 " *do the Work, then is the Time for Medi-*
 " *cines, to be prepar'd, and administer'd by*
 " *skilful Hands, in such Measures as Na-*
 " *ture needs them, and in such Methods*
 " *as are most likely to assist her. But to*
 " *put Nature out of her own Course, with-*
 " *out Cause, or to force upon her unnecessary*
 " *Assistances, is not to preserve, but to de-*
 " *stroy the Constitution. Medicines (like*
 " *other Experiments) promise many Things*
 " *which they do not perform; or how-*
 " *ever they may seem for the present to*
 " *make the Work more quick and short,*
 " *it is frequently found in the End, that*
 " *it had been far better to have left Na-*
 " *ture, though somewhat more slow, to*
 " *do the Work in her own Way. So in*
 " *our present Case, if the Helps which our*
 " *Temporal Legislature affords the Church*
 " *happen to be unnecessary, or to be apply'd*

“ *in an undue Manner, they do not only do*
 “ *no Service, but a manifest Disservice, to*
 “ *the Church; by taking the Suppression*
 “ *of Vice out of the Hands of the Spirit-*
 “ *uality, (whose proper Province it is, and*
 “ *who are most likely to pursue it) and put-*
 “ *ting it into the Hands of the Laity.—*
 “ *Such is the Credit and Authority of Sta-*
 “ *tutes, that no Matter in which they in-*
 “ *terpose, how Spiritual soever in its own*
 “ *Nature, is in common Opinion reckon'd*
 “ *any longer a Spiritual Care. From all*
 “ *which it seems very evident, that the Cor-*
 “ *rection of Vice, and of other Defects and*
 “ *Irregularities of a Spiritual Nature, is*
 “ *most like to succeed in those Hands, to*
 “ *which the general Frame of our Constitu-*
 “ *tion has assign'd it, that is, in Spiritual*
 “ *Hands. And as to Temporal Penalties,*
 “ *that the ONLY WAY to make them truly be-*
 “ *neficial to Religion, is to provide them as a*
 “ *further Terror and Punishment, TO BE*
 “ *CALL'D IN, AS OFT AS the Censures of the*
 “ *Church are disobey'd.*

I hope the Importance of the Doctrine
 advanced in this Passage, will excuse the
 Length of the Quotation. For surely a
 Doctrine of more Importance, and which
 more justly merits a *proper Animadversion*,
 hath not been advanced of late Years. It
 is, in my Apprehension, no more nor less
 than this, *That the Parliament, in framing*
Laws concerning Religion, and for the
Punish-

Punishment of Vice, ought to take its Measures from the Clergy, and to conduct it self by their Sentiments: And that Temporal Penalties in these Cases, are proper only when provided to be called in, as often as Spiritual Censures prove ineffectual. I would not do his Lordship any Injustice: I think I do him none in placing his Sentiments in this Light. For if the Clergy may be presumed the best and most proper Judges of the Methods for promoting Religion, and the Interest of the Church in all Kinds; and if this Presumption is to be apply'd to the Case of making Laws concerning Religion; (his Lordship expressly applies it to that Case;) it will follow, that the Ends of Religion are likely to be answer'd, and the Interest of the Church most effectually promoted, by Laws made with the Advice and Concurrence of the Clergy, and by such Laws only. For Government, in every Branch of it, ought to be conducted by the best Advice, the Advice of those who are the most competent Judges in the Case. It will follow likewise, that Acts of Parliament concerning Spiritual Persons and Spiritual Things, (saving always such as have been made upon the Special Petitions of the Clergy themselves) may with no great Impropriety be compared to Quack Medicines; which promise great Matters, speedy, safe and infallible Cures; but in the End, destroy rather than preserve the

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Constitution. It will follow likewise, that Queen *Elizabeth* was not mistaken in Point of Reason and Expedience, (however she might be in Point of Law,) when she told the Commons, that she would not suffer any Bills concerning Religion to be preferred or received in their House, UNLESS THE SAME WERE FIRST CONSIDER'D AND LIK'D BY THE CLERGY. Upon his Lordship's Principle, she must be acknowledg'd to have acted the Part of a most wise Princess: For who should presume to give a *Fiat* to Bills concerning Religion, but those who are the best Judges of it, and of the Methods for promoting it?

I observ'd before, under the Head of Ecclesiastical Administration, that his Lordship is arguing upon a Fact which will not be hastily admitted, the *superior Knowledge, Sufficiency and Integrity of the Body Spiritual*. The Reasoning in this Passage is of the same Kind. It is built on a Presumption against Experience, and in Defiance of all Historical Evidence. His Lordship refers us to the Times before the Reformation; and says, very truly, that the greatest Part of our ancient Laws *in Favour of the Church and Clergy*, were made upon special Petitions of the Clergy themselves. But with great Submission, the Point is not what Favours a *corrupt Clergy* thought proper to ask, or what the Legislature granted. The true Point is, what Measures were taken at
the

the Instance of the Clergy, for promoting the Ends of Religion. Were the Severities exercis'd towards the Poor *Wicliffites*, conducive to the Ends of Religion, and the Interest of the Church of God? They were the genuine Effects of Sacerdotal Councils. The Laws, I say, under which the *Wicliffites*, our elder Brethren in the Reformation, suffer'd, were made at the *special Petition of the Clergy*. His Lordship informs us, c. 402. that the Statute of the 2d of *Henry IV.* was so: And Sir *Robert Cotton*, speaking of that Act, says; "This was the first Statute Cotton's Records, 409. and Butcherly Knife, that the *impeaching Prelates procur'd*, or had, against the poor Preachers of Christ's Gospel."—— "At Ibid. 456. this Time, (8th *Henry IV.*) says the same Writer, The Clergy suborn'd *Henry*, Prince, in the Name of the Bishops and Lords, and Sir *John Tibbot*, Speaker, in Name of the Commons, to exhibit a long and bloody Bill against certain Persons called *Lollards*; namely, against them that preach'd or taught any thing against the Temporal Livings of the Clergy."—— Wherein note a most unlawful and monstrous Tyranny: For the Request of the same Bill was, that every Officer, or other Minister whatsoever, might apprehend and enquire of such *Lollards*, without any other Commission; and that no Sanctuary should hold them." The same Writer speaking Ibid. 555. of

of the Parliament held in the 5th of Henry V. says, " The Clergy at this *their* " *own Parliament* cease not to rage and roar " against Christian Blood *tanquam Leones* " *Rugientes*— for whoever did the Fault, " they cry'd, Crucify Christ, and deliver to " us *Barabbas*.

But — I will not pursue an invidious Task: 'Tis sufficient to have just mention'd some of our Parliamentary Proceedings, *in Favour of the Church and Clergy*, which appear to have taken their Rise from the Petitions of the Clergy themselves.

P. 20.

When his Lordship first took Occasion to mention the Power of Parliament in Matters of Religion, he seems to have imposed Silence on himself, and saith, " The making " Laws concerning Religion by the Temporalty in Parliament, is a *Point not to be* " *touch'd for divers Reasons.*" If his Lordship did really apprehend it a Point not to be touch'd, it is surprizing to me he should so soon handle it in the Manner he doth, in the Passage I have transcrib'd at large. But it is still more wonderful, that in doing so, the Case of a general Corruption in the Body Spiritual did not occur to him. The Principle is general, *that the Clergy may be presumed the best Judges of the Methods for promoting Religion and the Interest of the Church in all Kinds:* The Instances of a Conduct resulting, or supposed to result, from the Principle, are fetch'd from the
Times

Times *as well before as since the Reformation*: And the Reasoning grounded on it, extends, for any thing his Lordship hath said to qualify or restrain it, to all Times and to all possible Circumstances. I hope therefore it will not be thought an unreasonable Question — *What is to be done when the Body Spiritual it self needs reforming?* When great and dangerous Errors in Principle and Practice prevail; Errors, gainful to the Clergy, but destructive of every thing which deserveth the Name of Religion; What, I say, is to be done in this Case? It will not, I presume, be said, that the Legislature is to wait till the Body Spiritual reforms it self: That Corruptions in Doctrine, and Abuses in Government, must be entertain'd and submitted to, till those who *profit by them*, complain and petition for Reformation. This would make all Reformation impracticable. The Legislature was sensible of this in the Case of our Reformation from Popery; and, as I observ'd before, took the Work into its own Hands, and succeeded gloriously in it. Will any one presume to say, that the first Act of Uniformity was a *Piece of Quackery*, because (to pursue his Lordship's Allusion to the Case of the Body Natural) certain *Graduate Physicians*, who brought on the Distemper, and profited by it, were not consulted in the Cure? And if the Legislature did not go beyond its Province, in that
great

great and important Instance ; (his Lordship will not say it did ;) is it in any Respect improper, that it should, by all prudent and legal Methods, secure or perfect its own Work ? The Temporality in Parliament surely did not shake off one Sett of *Spiritual Pædagogues*, only to subject themselves and Posterity to the *Discipline* of another.

His Lordship having said, that the making Laws concerning Religion by the Temporality in Parliament, is a Point not to be touch'd, adds, " But I hope it will be no Offence
 " to mention what has heretofore pass'd be-
 " tween the Court and the House of Com-
 " mons on that Head.—*May 22. 1572.* it
 " is signify'd by the Speaker that her Ma-
 " jesty's Pleasure is, that *from henceforth*
 " no Bills concerning Religion shall be pre-
 " fer'd or receiv'd into this House, *unless*
 " *the same should be first consider'd and lik'd by*
 " *the Clergy.* And in the Year 1575. when
 " the same House petition'd the Queen con-
 " cerning Reformation of Discipline in the
 " Church, *in order to proceed in a Parlia-*
 " *mentary Way,* her Majesty's Answer was,
 " That she had already had Conference with
 " some of the Bishops about it, and had
 " *given them in Charge to see due Refor-*
 " *mation.* And that if they should neglect
 " *or omit their Duties,* her Majesty by HER
 " SUPREME POWER AND AUTHORITY OVER
 " THE CHURCH OF ENGLAND, *would speedily*

" *dily see such good Redress therein, as might*
 " *satisfy the Expectation of her loving*
 " *Subjects.*

His Lordship seems unwilling to trust his Readers with a *single Citation* of the Message of 1572. It is, to inculcate the Doctrine it contains, repeated in the Passage I before quoted, with a Remark, " that p. 301

" *Queen Elizabeth thought it no unreasonable Message.*" Will his Lordship permit me to ask, What are *his* Sentiments of it? What Opinion doth his Lordship desire his Readers should entertain of it? — But why is the Reader reminded of Queen Elizabeth's Sentiments on the Head of Reformation? If her Majesty's Opinion, as his Lordship hath truly stated it, is to have any Weight in the Argument, it is, in my Apprehension, a *Weapon which cuts both Ways.* The Commons are, indeed, forbid to meddle; but on the other Hand, *the Bishops have received a Charge from her Majesty, which, if they neglect, her Majesty will do the Work by virtue of her own Supremacy.* So that while her Majesty was *correcting* the Forwardness of the Commons, She did not forget to *read a Lecture of Humility to the Clergy themselves.* And whether the Work of Reformation be carried on by the Temporality in Parliament, or by the Bishops, as the *ordinary* Ministers of the Crown, in *Obedience to Royal Injunctions,* or by special Commission from the Crown,
the

the Case will be the same, with regard to his Lordship's Presumption in favour of the *superior Knowledge, Sufficiency and Integrity of the Body Spiritual*; and all his Reasoning, built on that Presumption, must fall with it; unless he will take Refuge under the Maxim in Law, that the King is *mixta Persona*, partly Spiritual and partly Temporal: A Maxim, very true in the Sense the Lawyers understand it, but not at all favourable to his Lordship on this Argument.

P. 29.

I must, however, do his Lordship the Justice to own, that though he doth not appear to be entirely satisfied with meer Parliamentary Remedies, in Case of Disorders in the Ecclesiastical Constitution; yet I do not find him inclin'd to resolve all Spiritual Power into the *Royal Supremacy*. For there is another Legislature his Lordship hath an Eye to, namely, THE CONVOCATION. " We have, says he, already observed, that *England* is governed by two " DISTINCT Administrations: one Spiritual, " for Matters of a Spiritual Nature, and " the other Temporal, for Matters of a " Temporal Nature. *And for the same Ends* " it hath two Legislatures; the one consisting " of Persons Spiritual, the other of Persons " Temporal; *whose Business it is to frame* " *Laws for the Government of Church and* " *State*. If the *Codex* should ever fall into the Hands of a Person utterly unacquaint-
ed

ed with the History and Constitution of *England*, he would probably conclude from *this*, and other Passages I shall have Occasion to mention, that the Two Legislatures his Lordship speaks of, have from Time to Time, been assembled for the different Ends mentioned by him, as often as the Exigencies of Church or State required it; the One to frame Laws for the Church, the Other for the State. He would likewise conclude, that in Point of Authority, the Two Legislatures are equal, within their respective Provinces; and that One hath not *ordinarily* intermeddled, in the proper Business of the Other. These Conclusions, I think, a Reader, utterly ignorant of our History and Laws, would naturally draw from his Lordship's Manner of expressing himself here, and in other Places, concerning our *Two Legislatures as now subsisting among us*. But how would he be surprized to be told, that the present Age is indebted to our Spiritual Legislature for no more than one short Body of Laws, compiled within these last 200 Years! That, indeed, other Canons and Constitutions were framed by our Ecclesiastical Legislature, so long ago as the Reigns of *Queen Elizabeth* and *Charles I.* But that the Authority of the former, through some Defect in the Royal Instrument of Confirmation, expired with the *Queen*: And that the latter were universally exploded as soon as made; and never

Canons of
1603.

Canons of
1597.

Canons of
1640.

4. *Rushw.*
100, to 112.

had any other Effect, than to draw a severe Censure from the *Temporal*, upon the *Spiritual* Legislature. These Things, I say, would probably give some Surprize to a Person, who hath learn'd from his Lordship to conceive otherwise concerning our Ecclesiastical Legislature. But his Surprize will be greatly increased, when he comes to be inform'd, that this Legislature is absolutely under the Controul of the other; which hath set Bounds to it, *over which it dares not pass*: That even the Subjects of its Enquiry and Debate, as well as the Extent of its Ordinances in Point of Obligation, are prescrib'd by Statute Law; that it cannot so much as *attempt* any Canons or Constitutions, without a Royal Licence: And that none of its Ordinances are binding even against the private Customs of a single Parish. And yet this is the Legislature his Lordship thinks proper to place in the same Point of View with the HIGH COURT OF PARLIAMENT; which, in Contradistinction to it, and *by way of Diminution*, he is pleas'd to call *our Temporal Legislature*. To this Spiritual Legislature, his Lordship leads the Hopes and Expectation of his Readers for the Amendment of our Ecclesiastical Constitution: A Work, in which, according to the Scheme of the *Codex*, not only known and undoubted Principles of Law, but *Acts of Parliament* too, are to be superseded.

His

His Lordship hath not spared to acquaint his Readers, that our Ecclesiastical Constitution is not *at present* on a right Foot. The Exceptions he is perpetually taking to the Judgments of *Westminster-Hall*, "are, as" he says, honest Attempts after Truth, and "may *help things into a right Course by De-* P. 12. "grees." The ancient Canons, foreign and domestick, are annex'd by way of Commentary to our present Laws, "to facilitate" the *Improvement of this Constitution*, by P. 14. "suggesting such useful Rules of *Order and Discipline*, as have been establish'd abroad, "or attempted at home." The Citations from the *Reformatio Legum* "are grafted *Ibid.* "into this Work, as *Candidates for a Place* "in our Constitution." And the Instruments P. 15. and Records in the Appendix are, among other Views, inserted, "as Patterns for the Improvement of *Discipline and Order*." And P. 6. even Laws repeal'd and obsolete are incorporated into the *Codex*, "as necessary in Order to the making new Laws, as oft as" Designs are on Foot to *supply the Defects of our Constitution* in any Point." So that in his Lordship's Judgment, the Ecclesiastical Constitution is defective, especially in Point of Order and Discipline, *the Life and Soul of Sacerdotal Power*. The Body Spiritual is distemper'd, and proper Remedies are to be apply'd by the Legislature. But by what Legislature? — My meer *English* Readers, who perhaps have not enter'd far into

Synodical Learning, will forgive me that I ask the Question: If it be an Impropriety, his Lordship hath led me into it. I confess, the good People of *England* have always made THE PARLIAMENT their Refuge, in Cases which have needed Reformation. And as national Customs beget Habits and Prejudices, which are sometimes mistaken for first Principles, and even the Dictates of Nature, some of my Readers may possibly be scandaliz'd at the Question, *By what Legislature are the Defects in our Constitution to be remedy'd*: My Excuse, I say, is, that his Lordship hath put me upon the Enquiry. For he supposeth that Things are out of Order, but doth not once, as far as I see, turn his Eyes towards the Parliament for the Remedy. No — “*The Clergy themselves may be presum'd the best Judges, what are the proper Methods for promoting Religion and the Interest of the Church in all Kinds: — the most proper Judges, as of the Assistance the Church really needs, and of the several Degrees of it; so of the Methods, by which that Assistance may be most effectually convey'd and apply'd.*” Accordingly, the Church and her Interests, are recommended by his Lordship to the Wisdom and Care of the CONVOCATION. His Lordship complains that Bishops and other Ordinaries have taken the utmost *Liberty the Law allows them*, in granting Offices held under them

P. 30.

P. 26, 27.

them in Prejudice of their Successors. "This, says he, being of so great Importance to Religion *and Discipline*, it were to be wish'd that the ECCLESIASTICAL LEGISLATURE would take this Matter into Consideration; and having maturely deliberated what Bounds are most proper to be fix'd in this Matter for the Common Good of the Church, would restrain all Ordinaries by *Ecclesiastical Censures*, from exceeding the Bounds that shall be appointed them."—In other Words, They are to be restrain'd by the Authority of the Ecclesiastical Legislature, from exercising a Power, *which the Law adjudgeth, and his Lordship admits, to be inherent in them.* So with Regard to the Heads of Reformation suggested in the Book, intitl'd, *Reformatio Legum, &c.* they are, as I observ'd before, inserted "as Candidates for a Place in our P. 14.

"Constitution, IN CASE THE CONVOCATION shall think them deserving." And in General, every Defect in our Ecclesiastical Constitution, seems, in his Lordship's Judgment, amendable by *his Spiritual Legislature.* "Our present Rule, *saith his Lord-* P. 31.

ship, of Government and Discipline in the Church, are the Laws in Being of all Kinds: And these, as they are now digested under proper Heads, may possibly be found a more compleat Rule, and more effectual for those Ends, than is generally imagin'd; supposing them to be duly actuated,

“ ated, and every Person to be *constrain’d* to
 “ a *vigorous Execution* of the Part which
 “ belongs to him. *And whatever Improve-*
 “ *ments may be needful in particular Cases,*
 “ the Consideration of them falls not within
 “ the Design of this Discourse — nor in-
 “ deed does it fall within the Province of
 “ any Person in his private Capacity. *And*
 “ *therefore all such Suggestions are to be*
 “ *reserv’d, till that Matter shall be made*
 “ *the Subject of SYNODICAL Enquiries and*
 “ *Debates.*

There is in this Passage an Air of Mo-
 desty, and Deference to the Wisdom of Su-
 periors, which, I am sorry to say, is not per-
 fectly of a Piece with the general Turn of
 the *Codex*; wherein the Judgments of *West-*
minster-Hall are frequently arraign’d, and
 even the Wisdom and Propriety of Parlia-
 mentary Provisions in Ecclesiastical Affairs,
 are sometimes call’d in Question. *Here* in-
 deed we are told, that the Consideration
 of such Improvements as our Ecclesiastical
 Constitution may need, falls not within the
 Province of any *Person in his private Ca-*
capacity. If his Lordship had constantly go-
 vern’d himself by this Rule, the *Codex* could
 not have swoln to its present Bulk: For
then, neither his Lordship’s *useful Rules for*
Order and Discipline, establish’d abroad or
attempted at home; nor his *Candidates for*
a Place in our Constitution; nor even *His*
honest Attempts after Truth; would have had

had a Place in it. But this by the Way. — As to the Passage before me, I wish the Deference and Submission express'd in it, had been paid, where I think it is solely due, I mean to the Parliament. For a very little Reflection must convince any Man, that the Improvement of our Ecclesiastical Constitution can never fall within the Province of *his Lordship's Ecclesiastical Legislature*. The Work, if ever it be effected, must be effected by the Parliament alone. For what Improvements doth his Lordship mean, *but Improvements in the present Rule of Government and Discipline in the Church?* And what is the present Rule of Government and Discipline in the Church, *but the Laws in Being of all Kinds?* And doth his Lordship think, that the Amendment of the Laws in *Being of all Kinds* falleth within the Province of *his Ecclesiastical Legislature*, or will ever be made the Subject of *Synodical Enquiries and Debates?*

The Notion of *Two separate Legislatures* for the different Ends of *Civil and Ecclesiastical* Government, may, for ought I know, be entertain'd with Pleasure, by Churchmen of ambitious Views. But the Civil and Ecclesiastical Politics are, in the present State of Things, too closely connected in their Influence on the Community, to admit of such a *Partition of the Sovereignty*, without evident Danger to the Whole. And indeed I do not see, that the Spiritual Legisla-

ture, in Contradistinction to the Temporal, and as consisting of Spiritual Persons with an absolute Exclusion of the Laiety, can boast of any better Original, than the Usurpations of the Church of *Rome*, in the very corruptest Ages *even* of that Church.

If the Gentlemen of *Synodical Learning* will permit us to carry our Enquiries on this Head so far back as to the *Apostolick Age*, we shall find that the Laiety at that Time bore a Part in the most solemn Deliberations which concern'd the Interest or Government of the Church. The *whole Number* of *Believers* was consulted in the Choice of a fit Person to succeed to the Apostleship, which became vacant by the Apostacy and Death of *Judas*. *Matthias* was chosen, after solemn Prayer to God for his Direction, by the *Suffrage or Ballot of the whole Church*. The *Multitude of Disciples* was advis'd with touching the Institution of a new Order of Church Officers, *the Order of Deacons*. The Constitution it self, as well as the Election and Consecration (as it is now call'd) of the Seven, was the Act of the *whole Multitude*. The Apostles, Elders and Brethren, (or as it is otherwise v. 22. express'd in the same Chapter, the *whole* v. 12. *Church, or all the Multitude*) assembled at *Jerusalem*, to deliberate on the great Question, *How far the Gentile Converts were obliged to submit to the Law of Moses*. And after two of the Apostles of the *Circumcision*

circumcision had delivered their Opinions; which they supported, *not by Apostolical Authority*, but by strong Reasoning built on well known Facts, and Principles universally admitted: And after *Paul* and *Barnabas*, Apostles of the *Uncircumcision*, had related to the Assembly a Series of Facts happening within their own Observation; from whence it might be reasonably concluded, that God approv'd the Conversion of the *Gentiles*, and would receive them into his Church, without the Rite of Circumcision: After the Assembly, I say, had proceeded thus far in the Way of rational and free Debate; they came to a Resolution, which they communicated to the Churches concern'd, by Letter and Message, in *the Name of the whole Body*. Methinks, by the Way, his Lordship's Reasoning for appropriating the Care of Spiritual Affairs to the Clergy, loses a great deal of its Weight, when we reflect on the Behaviour of the Apostles in these Instances. As the Apostles had really that Superiority in Gifts and Abilities, which their Successors *bless themselves* withall, *They*, of all Men living, might have claim'd a separate and exclusive Right of Jurisdiction and Legislature, in Spiritual Matters. But the Apostles did not exclude the *Brethren, the Body of the People*, from their Counsels, nor dictated *magisterially* to them. They reason'd as with Men and Christians; and made no other Use of their superior

superior Gifts and personal Knowledge of Facts, than to convince and persuade. And their Arguments, attended with the most evident Tokens *in themselves* of a disinterested Zeal for the Honour of God, and the Good of the Church, had a suitable Effect on their Hearers.

In Conformity to the Practice of the *Apostolick Age*, the Laiety continued to have a Share in the Government of the Church, *as Members of a voluntary Society, and interested in its Concerns*; till the Conversion of the *Roman Emperors* made Way for very considerable Changes in the Ecclesiastical Polity. Till that Time, all the Affairs of the Church were administer'd, at voluntary Assemblies of the Parties concern'd; which soon gained the Name of Councils or Synods; whereof the Laiety were always consider'd as Members. At these Meetings, Matters of Order and Discipline were transacted: And if any new Rules appeared to be necessary for the End of Government, they were here agreed upon. *This was the Ecclesiastical Legislation of the primitive Church.* But when Christianity became the establish'd Religion of the Empire, and Church and State became one Body, consider'd only in different Views and under different Relations; the Ecclesiastical and Civil Laws of the Empire flow'd from one and the same Source, *Imperial Rescripts.* For though the Name and Shadow

Constitution
and Disci-
pline of the
Primitive
Church
Edit. 1712.
p. 143, 144.
Father Paul's
Rights of
Sovereigns,
p. 44.
Treatise of
Beneficiary
Matters,
Edit.
1680, p. 19.

Shadow of the *Senatorial* and *Tribunitia* Powers remain'd, those Powers had been long extinguish'd: And the whole Legislative Power of the Empire was *really* vested in the Emperor. And by this Legislature were Ecclesiastical, as well as Civil Laws, *ordinarily* made; as every one sees, who hath but look'd into the Titles of the *Justinian* and *Theodosian* Codes. The Emperors did indeed, upon extraordinary Occasions, call Ecclesiastical Councils; sometimes of *the Clergy and Laity*, as particularly at the first Council of *Nice*; but more frequently, I believe, of the Clergy alone. At these Councils the Emperors, in Person, or by their Ministers, usually presided, and assented to the Decrees *there* made; and in some Instances, did by a separate Instrument, in Form of an *Imperial Rescript*, ratify the Decrees. The Presence, and Concurrence of the Emperor to the Acts of the Council, gave them their binding Force, and incorporated them into the Laws of the Empire. For the whole Legislative Power being, as observ'd, in the Emperor, nothing could become Part of the Law, without *his* Authority. This Principle of *the Necessity of an Imperial Sanction to Synodical Decrees*, seems to be so well understood in *Justinian's* Time, that he expressly ordain'd, that the Acts of the Councils of *Nice*, *Constantinople*, *Ephesus* and *Chalcedon*, should have the Force of Laws within the Empire.

Socrates,
Lib. 1. c. 5.

“ *Sancti-*

Novel. Coll.
9. Tit. 6.

“ *Sancimus igitur Vicem Legum obtinere*
“ *Sanctas Ecclesiasticas Regulas quæ a San-*
“ *ctis Quatuor Conciliis expositæ sunt aut fir-*
“ *matæ; hoc est in Nicena, &c.*” And as the
Imperial Authority gave a Sanction to *Synodical* Decrees, it likewise made those Decrees be considered as a Sort of *Universal Law*; since the *Roman* Empire, before its Declension, took in the greatest Part of the Christian World.

This Universal Monarchy fell to Pieces about the Beginning of the fifth Century. And I think it highly probable, that the Northern People, who erected independent Kingdoms on the Ruins of it, after their Conversion to Christianity, provided for their *Ecclesiastical*, in the same Manner as they did for their *Civil*, Politics. The Interests and Concerns of both were subject to one Legislature; which was generally a Mixture of the *Regal*, *Aristocratical*, and *Democratical* Forms, or at least of the two former; the Clergy likewise being, for the most part, admitted to a Share in the Legislature. But what more immediately concerns us, is to enquire, how far his Lordship's Notion of two distinct Legislatures prevail'd in Practice in this Nation: By what Steps, the Spiritual Legislature was introduced: And upon what Foot it stands at present.

About the Year 410, *Honorius*, having withdrawn his Forces from *Britain*, discharged

charg'd it from all Obedience to the Empire. From this Time, therefore, we are to consider *Britain*, as an independent Kingdom; providing for the Exigencies of Church and State, by its own Laws, and by Methods suited to the Genius of the People. The *Roman* Power was at an End; and the Supremacy of the Bishop of *Rome* was not heard of here, till *Austin* came and preach'd Ann. 601. it. During this Interval there were two Councils held in *Britain*, for stopping the Progress of the *Pelagian Heresy*; the first in the Year 426, the other in 429. It is certain the Laiety were present at both; but whether as Members, or meer Spectators, at the first, doth not plainly appear. But the second is expressly called *Magna Synodus Clericorum & Laicorum in Uno Concilio*. Which leaves no Room to doubt, that the Laiety assembled with the Clergy, as Members of the Council: And, at the same Time, renders it extreamly probable, that at the other, held but three Years before, they did so too.

Just about this Time the *Saxons* landed Ann. 449. in this Island; and a long War ensued between them and the *Britains*, which ended in the Ruin of the latter. So that from henceforward, we are not to expect any Light in the Questions before us, till the *Saxons* became Christians. This happen'd, first in the Kingdom of *Kent* about the Year 600. And by Degrees Christianity made

made its Way into the other Kingdoms of the *Heptarchy*, till they had all receiv'd it.

The Laws of *Ethelbert* and *Withred*, Kings of *Kent*, and of *Ina* King of *Westsex*, during the *Heptarchy*, are extant; as are also those of *Alfred*, *Edward* the Elder, *Athelstan*, *Edmund*, *Edgar*, and *Cnute*, after the Union of the Kingdoms. From these Laws it may reasonably be concluded, that his Lordship's Distinction between the Ecclesiastical and Civil Concerns of the Kingdom, as being under the Care of Two separate Legislatures, and subject to different Administrations, did not take Place among our *Saxon* Ancestors: Since the Constitutions touching the Rights and Immunities of the Church, Church Ornaments and Repairs, Privilege of Sanctuary, the Immunities of Churchmen, and their Christian Deportment, particularly in the Matter of Celibacy; the Constitutions enjoyning the religious Observance of the Lord's Day, and Church Holy-days, whether Fasts or Feasts; prohibiting Idolatrous Worship and Marriage within the Canonical Degrees, or during the Holy Season of *Lent*; the Laws regulating the Time for the Baptism of Infants, the Order of the Church Service, together with the Business of Confession, Penance, and Commutation: The Laws, I say, made from Time to Time for these and other Ecclesiastical Purposes, are blended with the Civil Constitutions; as being made

at

at the same Time, and by one and the same Legislature, the GREAT COUNCILS (or in modern Stile the Parliaments) of the respective Kingdoms during the *Heptarchy*, and of the United Kingdom afterwards.

It cannot be deny'd, that during the *Saxon* Times there were some Assemblies *purely Clerical*, to which the Laiety do not appear to have been call'd. But as these were rare, so the Matters transacted at them were not of general Concernment; being such as related principally to the Behaviour of the Bishops and their Clergy, and in which the Laiety were not at all, or very little, interested. But it doth not seem to have entered into the Imagination of those, who best knew the Extent of Ecclesiastical Power, and were most concern'd to support it, that Alterations in our Constitution, of a publick Nature, and general Concernment, relating even to *Matters purely Spiritual*, could be effected otherwise than by the ordinary Legislature of the Kingdom; Or at least by Councils held on special Occasions: at which the great Men of the Laiety *ordinarily* assisted.

About the Middle of the eighth Century, a general Corruption of Manners prevail'd in *England*: To which the evil Example of the Clergy and their Neglect of the Pastoral Care, were thought to have principally contributed. Upon this Occasion, Pope ^{I. Spelm.} Zachary wrote to *Cuthbert* Archbishop of ^{Con. 237.} *Canter-*

Canterbury, and exhorted him to call a Synod, in which such new Canons might be establish'd, as *might be necessary for reforming the Clergy.* Boniface Archbishop of Mentz, the Pope's Legate at that Time in Germany, wrote to the same Purpose to Ethelbald King of Mercia, and also to the Archbishop. In Consequence of these Admonitions, the Council of Clovesho was holden; at which were present, besides the Bishops and other Ecclesiasticks, the King himself, *cum suis Principibus & Ducibus.* Malmsbury; speaking of Cuthbert and of this Council, says, "*Hic est qui pro com-*
"*pescendis Vitiis Concilium Magnum co-*
"*egit Angliæ, Bonifacii Admonitu et*
"*Ethelbaldi Regis Ope ——— Hæc habentur*
"*Synodalia gesta prope locum qui vocatur*
"*Clovesho, presentibus his Dei dilectis*
"*Præsulibus Ecclesiarum Christi —*
"*Anno 747; Anno autem Regni Ethel-*
"*baldi Regis Merciorum, qui tunc aderat cum*
"*suis Principibus & Ducibus, 33º.*" The same Historian informs us, that at *this Council* all Churches and Monasteries were exempted from secular Burdens and Services, except Contributions to the Repair of publick Bridges and Fortresses. Sir Henry Spelman hath given us the Act of Exemption, which concludes thus; "*Hi Testes adfu-*
"*erunt, et Nostri Magistratus Optimates et*
"*Duces fidelissimique amici consenserunt &*
"*subscripserunt.*" — And then follow the
Sub-

Ann. 747.

De Gest.
Pontif. L. I.

De Gestis
Regum, L. 1.

1. Spelm.
Con. 256.

Subscriptions of the King, with some Bishops, and a few of the principal Nobility; which was the constant Form of passing Parliamentary Grants in those Days.

It is needless to enter into a particular Detail of the Canons of this Council. It is sufficient to observe, that they relate to *Affairs purely Spiritual*; as, the Duty and Behaviour of Bishops, and other Ecclesiasticks; the Qualification of Candidates for holy Orders; the Order of the Church Service, and of Singing and Reading in Churches; and the like. So little was it then conceiv'd, that these Matters were proper only for *Synodical Enquiries* and Debates, in his Lordship's Sense of that Word.

In the Year 787, Pope *Adrian* sent two Legates into *England*, with Instructions to introduce into our Constitution a Body of Canons *purely Ecclesiastical*, fram'd at *Rome* for the Government of the *English* Church. The Legates, having executed their Commission, join'd in a Letter to the Pope, giving an Account of their Success. They begin with what pass'd in the Province of *York*: Where, they say, the King (of *Northumberland*) appointed a Day for holding a Council, to deliberate on the Subject of their Commission. On which Day, all the great Men of the Kingdom, as well *Ecclesiasticks as Seculars*, assembled: And the Canons being read, were assented to, “ *in Ibid. 300.*
Concilio publico coram Rege Ælfualdo, et
 K “ *Ar-*

Ibid. 301.

“ *Archiepiscopo Eanbaldo, et omnibus Episcopis et Abbatibus Regionis, seu Senatoribus, Ducibus & Populo terræ.*” They then proceed to what pass’d in the Province of *Canterbury*; where, they say, the Canons were read in a Council of the *Mercians*: Where the King (*Offa*) *cum Senatoribus terræ*, together with the Archbishop and other Bishops, were assembled: The Canons, they say, were assented to and sign’d by the King, *the Nobility*, the Archbishop and other Bishops.

What the Legates call a Council of the *Mercians*, was the Council of *Calcuth* or *Calchyth* in the Kingdom of *Mercia*: And probably was the *Wittenagemot*, or Parliament, of that Kingdom; since other Matters, besides the receiving these Canons, were done there; particularly, the admitting the King’s Son into Partnership with him in the Kingdom: A Course frequently taken in those Days, to secure the Succession to the Whole. I beg Leave to observe as I go on, that the Legates were too well inform’d of the Nature of the *English* Government, to think of executing their Commission by the Aid of, what his Lordship calls, Our Spiritual Legislature. And I must say, it doth not appear to me, that in those Ages, or indeed till long afterwards, Matters of so general Concernment, *though merely of an Ecclesiastical Nature*, came within the Province of any, besides the ordinary

ordinary Legislature of the Kingdom, at least not of any Legislature *purely Spiritual*.

I have not Time, or Inclination at present, to enter into an historical Detail of all the Councils held here on Church Matters. A few of the Principal I will just hint at; which, with what I have already mention'd, sufficiently shew the Sense our Ancestors had, of the Necessity of Interesting the Laiety in all Ecclesiastical Deliberations of general Concern. In the Year 816, ano-

ther Synod was held at *Calchyth*: Where particular Rules were prescrib'd for the Dedication of Churches and other Ecclesiastical Matters, "*Presidente Wolfredo Archiepiscopo, cæterisque adsidentibus Australibus Anglorum Episcopis, — Kenulphi Regis Merciorum Anno 20, qui tunc præsens adfuit cum suis Principibus, Ducibus & Optimatibus — cum Abbatibus, Presbyteris, Diaconibus* PARITER tractantes de Necessariis & Utilitatibus Ecclesiarum.

*1. Spelm.
Coen. 327.*

In the Year 822, a Synod was held at *Clowesho*, "*Præsidente Beornulpho Rege Merciorum, et Wolfredo Archiepiscopo, cæterisque Episcopis, & Abbatibus, omniumque dignitatum Optimatibus, Ecclesiasticarum scilicet & Sæcularium personarum; Utilitatem et Necessitatem Ecclesiarum, Monasterialisque Vitæ Regulam, et Observantiam, Stabilitatem quoque Regni* pertractantes.

ib. 332.

Ibid. 490.

In the Year 975, the Council of *Winton* assembled, to deliberate on the great Question between the Monks and the marry'd Clergy, "*Præsentibus Edgardo Rege cum sua Conjuge, Dunstano Archiepiscopo Cantia, cum cæteris Episcopis, Abbatibus, &c. Elfero Principe Merciorum, &c. Britnotho Comite cum Nobilitate totius Regni.*"

Ibid. 494.

There were two other Councils held upon the same Question, one at *Calne*, and the other at *Amesbury*, before the End of that Year; and at both the Nobility of the Kingdom assembled with the Clergy.

*1. Spelm.
Con. 510.*

In the Year 1009, was held the Council of *Eanham*, where the Celibacy of the Clergy, Marriage within the prohibited Degrees, the Observation of the Saints Days and their Vigils, of the Ember Weeks, the weekly Fast on *Friday*, and other Matters of the like Nature, were determin'd. This Synod is call'd "*Concilium generale seu Pananglicum*——*ab Ethelredo Rege editum, accersitisque Episcopis & universis Anglorum Optimatibus.* — We are afterwards told that, "*Universi Anglorum Optimates ad Locum ab Indigenis Eanham nominatum, acciti sunt convenire: Collecto ibidem Cbristicolarum Cætu Venerabilium quamplurimorum de Catholica Cultu Religionis recuperando, deque etiam Rei Statu Publicæ reparando, vel consulendo.*" Sir *Henry Spelman* observes, that this was not a meer Ecclesiastical Synod,

Ibid. 525.*Ibid.* 529.

Synod, but the *Wittenagemot* or Parliament of the Kingdom: And offers two Reasons in Support of his Opinion; first, that Civil, as well as Ecclesiastical, Constitutions were then made; and secondly, that the Council was held at *Whitsuntide*, one of the stated Seasons for the Meeting of the Parliament in those Days. I have been almost tempted to think, that he need not have had Recourse to any other Argument for the Proof of his Point, than the Presence and Concurrence of the whole Nobility of the Kingdom at the Council. But, on second Thoughts, I am inclin'd to believe, that some of the mix'd Assemblies we meet with, may not so properly be call'd Parliaments, as *Ecclesiastical Councils held on Special Occasions*; especially when Ecclesiastical Matters alone appear to have come under Consideration. And since it appears, that on these extraordinary Occasions, the Laity who had a Vote and Seat in the *Wittenagemot*, were ordinarily summon'd, we may rest our selves assur'd that *his Lordship's* Spiritual Legislature had in those Days no Place in our Constitution, or was very little regarded.

Monsieur *Rapin* * is of Opinion, that the Clergy did not presume to treat of Ecclesiastical Affairs, as a *separate Body*, till the Papal Power in *England* arriv'd to its ut-

* Dissertation on the Government of the *Anglo-Saxons*. Of the *Wittenagemot*, Art. 4.

most Height, under the latter Kings of the Norman Race, or rather until the Reigns of Henry II. and his immediate Descendants: And I believe he is not mistaken. I have already taken Notice of the Charter of *William the Conqueror*, to which the Separation of the Ecclesiastical and Civil Jurisdictions is supposed to be owing. It seems clear from this Charter, that the Body of our Ecclesiastical Laws was reform'd by Parliament, in this Reign. "*Sciatis*—

C. 1042. "*quod Episcopales Leges, quæ non bene nec*
 "*secundum Sanctorum Canonum præcepta,*
 "*usque ad mea Tempora in Regno Anglorum*
 "*fuerunt, Communi Concilio et Concilio*
 "*Archiepiscoporum, Episcoporum, Abbatum*
 "*et omnium Principum Regni mei, emen-*
 "*dandas judicavi.*" It doth not appear with any Certainty, when this Reform of the Laws was effected; probably it was at the Council of *London*, in the Year 1075. For at this Council, a Review seems to have been taken of the Ecclesiastical State; And because Councils had for a long Time grown into Disuse, *many of the ancient Canons were reviv'd.*

2. *Spelm.*
 Con. 7, 8,
 9, 10.

From this Time to the Reign of King *Stephen*, we meet with many Councils * assembled purely on Ecclesiastical Affairs, at which the great Men of the Laiety assisted,

* The Council of *Westminster* in the Year 1077. *Rockingham*, 1094. *London* in the Years 1102, 1107, 1109. *Westminster* in the Years 1126, 1127, 1138. *Northampton*, 1138.

as in the Times before the Conquest. But the Clergy, who, as I before observ'd, took Advantage of the Weakness of King *Stephen's* Title to the Crown, and the distracted State of his Affairs, to introduce the Study and Practice of the Canon Law with the separate Jurisdiction of the Spiritual Court; seem to have taken the same favourable Opportunity, for introducing into our Constitution *his Lordship's* Spiritual Legislature. For which they had the Authority and Example of Pope *Innocent II.* * *who at this* Onupbrius in
Platinam. *very Juncture* excluded the Laiety from all Pontifical Assemblies at *Rome*.

From the Year 1138 (the 3d of King *Stephen*) we meet with few or no Ecclesiastical Councils of the mix'd Kind; unless the Council of *Clarendon* be of that Sort. Anno 1164. We meet indeed with many Assemblies, or rather *Combinations*, of the Clergy in King *Stephen's* Time, which the Writers of that Age call Councils: At which, not the Concerns of Religion, but the Fate of the Kingdom, was decided. The Clergy had the Balance of Power in *their* Hands; and as they threw the Weight of their Credit and Influence into either Scale, *Stephen* and his Competitor, by Turns, prevail'd: Till at length, they were content to permit the former to hold the Crown, upon Terms advantageous to the Church. Which went on through the four succeeding Reigns, gaining

* Pope *Innocent II.* began his Reign in the Year 1130, and dy'd 1143.

Ground upon the Prerogatives of the Crown and the Rights of the People, till *both* were in a manner swallow'd up in the Rights and Immunities of the Priesthood.

The Change in our Constitution with Regard to our *Spiritual Legislature*, which I suppose to have had its Beginning in the Reign of King *Stephen*, and to have been compleated in that of his Successor, was certainly owing to a Cause his Lordship more than once upon other Occasions very justly complains of, *the over-ruling Power of the Court of Rome*: And the Means by which it was effected, seem to me to be, the *Legatine Commissions*; which grew into frequent Use, and began to be submitted to, though not without some Struggle, about this Time. When our Kings exercised their undoubted Prerogative of calling all Ecclesiastical Councils, and giving the Royal Sanction to their Decrees, the Great Men of the Laiety, who were the Members of the *ordinary Legislature*, bore a Part in these *Occasional Assemblies*: But about this Time, Ecclesiastical Councils began to be summon'd without the Concurrence of the Crown, and by Virtue of the *Legatine Power* alone. And an Innovation in a Point so fundamental, being once submitted to, soon introduced another, *the total Exclusion of the Laiety*. At first, indeed, when the *Legatine Commission* it self was new to the People, an Air of Modesty was affected

affected in this, as well as in other, Respects. *Legates* were appointed but seldom, and that upon extraordinary Occasions which seem'd to justify such a Procedure; and usually at the Desire of the Crown: And the Laiety were for some Time summon'd to *Legatine* Councils*, even when Ecclesiastical Affairs only came under Consideration. But as the *Papal* Power grew, the *Legatine* Commissions became more frequent; and the Presence of the Laiety began to be considered as an Incumbrance on Ecclesiastical Councils, at least as a Thing perfectly unnecessary.

Whoever considers the Notions which had been long entertain'd of the *Papal* Power, and what was supposed to be imply'd in the *Legatine* Authority, will not think I lay too great a Stress on it, when I impute to it this great Change in the Frame and Constitution of our Ecclesiastical Synods. Pope *Nicholas* II. in his Bull, confirming the Privileges of *St. Peter's* Church in *Westminster*, address'd to *Edward the Confessor*, says, "*Vobis vero & Posteris vestris Regibus, committimus Advocationem et Tutelam ejusdem loci, et Omnium totius Angliæ Ecclesiarum; et VICE NOSTRA, cum Consilio Episcoporum et Abbatum, constituatis ubique quæ justa sunt.*" This might perhaps be then esteemed an empty

*1. Spelm.
Con. 634.*

* The Councils of *Westminster* in the Years 1126, 1127, and 1138.

Compliment, paid to a weak superstitious Prince. But it was one of the usual Arts of the Court of *Rome*, to insert Clauses of this Kind into *Papal* Bulls and Decrees: Which, though they might have no Effect for the Present, did, in after-Ages, serve to countenance the Claims of that Court, and to establish a Dependence on it. Within a hundred Years after the Date of this Bull, a King of *England* (and one of the greatest Princes we have had) sued for the Character of the *Pope's Legate*; and would gladly have accepted it, if the Commission had not been clogg'd with a Clause which render'd it ineffectual to his Majesty's Views. *Henry II.* when he found himself embarrass'd in the Affair of *Thomas a Becket*, requested by his Ambassadors at *Rome*, that the Case might be refer'd to the Archbishop of *York*, as Legate to the Pope. The Pope would not hear of this: But AT THE PETITION OF THE AMBASSADORS, he condescended that *the King himself should be his Legate over all England*. Accordingly a Commission of *Legation* was prepar'd, and deliver'd into the Hands of the Ambassadors, to be forwarded to the King: But the Pope inserted a Clause in the Commission, by which the Case of *Thomas a Becket* was expressly excepted out of it. The King, finding that the Pope had excepted the only Affair which gave Rise to the Commission, sent it back with Indignation. This Instance,

Howeden sub
Ann. 1164.

if it stood alone, is, I think, sufficient to convince us, of the Regard which was in those Days paid to the *Legatine Commission*; since the King himself thought it worth suffering for, and would have accepted it, if he had not found himself trifled with in the drawing it up. It cannot therefore be thought strange, that Persons invested with the *Legatine* Authority, should be able to shut both Kings and People out from Ecclesiastical Synods; or that they should attempt it at the Time I have mention'd, when, besides the peculiar Circumstances of publick Affairs inviting them to such an Attempt, they had a very recent Example of the Pope himself to countenance them in it. And therefore the modern Advocates for Ecclesiastical Power, *especially those of the Reform'd Church*, ought not to build too much upon Antiquity; till they have carefully examined, whether the ancient Practice be not founded in *Papal* Usurpation.

I doubt his Lordship himself is not entirely clear on this Head: For he informs us, that "before the Reformation, such P. 294
 " Canons and Constitutions as were made
 " in Provincial Synods, received their last
 " Confirmation from the Metropolitan;
 " who had also *full Power* to publish and
 " promulge them." But his Lordship hath not told his Readers, whence the Metropolitans deriv'd this Power, nor when it came into Practice. It is very true, that
 for

for a long Time before the Reformation *Metropolitans* did assume a Power of calling *Provincial Synods*, and of confirming and promulgating their Decrees. But this Practice was a manifest Usurpation on the *Royal Supremacy*; grounded on, and supported by the *Papal Power*. All *Metropolitans*, as such, were, according to the Doctrine of the Court of *Rome*, no other than the ordinary *Vicars of the Pope*, within their respective Provinces. And therefore, till they had received the *Pall* from the Hands of the Pope, they were not accounted Archbishops; nor could exercise any Branch of the Archiepiscopal Function; *whereof that of holding Synods was accounted the Chief*. And so careful was the Court of *Rome*, that all *Metropolitcal Power*, whereof the *Pall* was the known Badge, should appear to be derived from the Pope; that if a *Metropolitan* happen'd to be translated to another *Metropolitcal See*, he was not permitted to make use of the *Pall* he had before received, much less that of his Predecessor: But was oblig'd to sue for it again, and generally in Person, at the Hands of the Pope; and in the mean Time, was look'd upon as disqualify'd to perform any *Archiepiscopal Act*. This was the Case of all *Metropolitans*. They were esteem'd the *Prime Ministers* of the Pope in their respective Provinces; and consequently, as the *Papal Power* grew,

grew, *theirs*, which was thought to flow from it, rose in a just Proportion with it.

There was another Circumstance, which especially contributed to give Authority to the Provincial Constitutions of *Canterbury*. The Archbishops of that See were frequently arm'd with the *Legatine* Powers, in the Character of *Legates a Latere*: So that what might possibly be wanting in the Ordinary *Archiepiscopal* Power, was supply'd out of the Fulness of the *Papal*. And those of them who were not armed with Special Commissions of that Kind, began, about the Time I have fix'd for the Rise of the meer *Clerical Legislature*, to be dignify'd with the Title of *Legati Nati* throughout that Province; a Character which seems to include all the *Legatine* Powers, when no Special Commission of that Kind was subsisting. This Dignity was first confer'd on the See of *Canterbury* in the Time of Archbishop *Theobald**; and all his Successors glory'd in it, till the *Papal Supremacy* was abolish'd.

*Sciden on
Fleta, c. 7.
S. 3.*

If this Matter had been consider'd as it ought, and especially if his Lordship had adverted to it, that the ancient Canons of our Church were the Work of *Provincial and Legatine Synods, holden in Derogation to the Royal Supremacy, and by Authority deriv'd from the Bishop of Rome*, he would

* He was advanced to that See in the third Year of King *Stephen*, and dy'd in the 7th of *Hen. II.*

have

have seen no Reason to have taken Offence at the Common Lawyers; who have insisted that the Authority of those Canons is now solely founded on the Statute of the 25th of Henry VIII. But it seems not to be sufficient in his Lordship's Estimation, to admit that they have gain'd a binding Force by Virtue, and under the Limitations, of that Act; unless the *Ancient Legal Authority of the Church in Point of Legislature, be likewise admitted*. It is not sufficient to say, that they remain in Force by Vertue of a saving Clause in the Act; unless we go further, and affirm, that they would have remain'd so, if *that* Clause had been omitted. So unwilling doth his Lordship seem to admit, that any Point of Ecclesiastical Power is grounded *merely* on Temporal Constitutions. But whether He is pleas'd to admit it or no; I think it clear, that when the *Papal* Power fell, the Canons, which were built on it, could not have stood without the Aid of Parliament. When our Constitution was brought back to its first Principles, *that the Convocation ought to be assembled only by the King's Writ; and that no Canons or Constitutions Ecclesiastical ought to be made, promulged or executed, without his Assent*; All the Synods of some Ages past must have been esteem'd unlawful Assemblies, and all their Acts meer Nullities, for want of the *Royal Mandate*

Mandate to authorize the one, and the *Royal Assent* to give Life and Force to the other.

This, I think must have been the Case, if the Legislature had not for wise Reasons interposed. But his Lordship is of Opinion, That " the ancient Canons did not lose P. 29.
" their *Ecclesiastical Nature and Obliga-*
" *tion* by any Thing enacted by the 25th
" *Henry VIII.* but would have remain'd
" good Laws under the Limitations of the
" Act, though the Proviso for continuing
" them in Force had never been made."

The Act his Lordship speaks of is *that* commonly call'd *the Act of Submission*: It en-
acts, " That the Clergy should not from 25. Hen. 8.
" henceforth presume to attempt, alledge, c. 19. S. 14
" claim, or put in Ure, any Constitutions
" or Ordinances, *Provincial* or *Synodal*, or
" any other Canons. Nor shall enact, pro-
" mulge or execute any such Canons or
" Constitutions — in their *Convocations in*
" *Time coming* — unless the same Clergy
" may have the King's most Royal Assent—
" to make, promulge and execute such
" Canons — Upon Pain of every one of
" the said Clergy doing contrary to this
" Act, and being thereof convict, to suf-
" fer Imprisonment, and make Fine at the
" King's Will." It further enacts, that
" the King shall have Power to nominate Sect. 2.
" thirty-two Persons, whereof sixteen to be
" of the Clergy, and sixteen of the Tempo-
" ralty. — And if any of the said thirty-
" two

“ two — happen to dye, — then his High-
 “ ness to nominate others from Time to
 “ Time of *the Two Houses of Parliament* —
 “ And that the same thirty-two shall have
 “ Power — to examine the Canons hereto-
 “ fore made, and such of them as the King’s
 “ Highness and the said thirty-two, or the
 “ *more Part of them*, shall deem — worthy
 “ to be continued, — shall from hence-
 “ forth be kept and obey’d, — so that the
 “ King’s Assent under the *Great Seal* be
 “ first had. And the Residue of the said
 “ Canons, — which the King’s Highness
 “ and the said thirty-two Persons, or the
 “ *more Part of them*, shall not approve, —
 “ shall from thenceforth be void and of
 “ none Effect. — Provided that no Canons,
 “ Constitutions or Ordinances shall be made
 “ or put in Execution within this Realm
 “ by Authority of *the Convocation of the*
 “ *Clergy*, which shall be contrariant or re-
 “ pugnant to the *King’s Prerogative Royal*,
 “ *or the Customs, Laws or Statutes of this*
 “ *Realm.*”

Sect. 7. “ Provided also, that such Canons, Con-
 “ stitutions, Ordinances and *Synodals Provin-*
 “ *cial, being already made*, which be not con-
 “ trariant or repugnant to the Laws and Sta-
 “ tutes and Customs of this Realm, nor to
 “ the Damage or Hurt of the King’s Prero-
 “ gative Royal, shall *now still* be used and
 “ executed, as they were before the ma-
 “ king of this Act, till such Time as they
 “ be

“ be view’d, search’d, or otherwise order’d
 “ and determin’d by the said thirty-two
 “ Persons, or the more Part of them.” The
 Question between his Lordship and the
 Common Lawyers, with Regard to the
present Authority of the ancient Canons,
 arises on the last Proviso, compar’d with
 the first Clause of the first Section. The
 Common Lawyers (and many Divines I
 could name) are of Opinion, that all the
 ancient Canons must have dropt at once by
 Virtue of the Clause which enacts that the
 Clergy shall not *put them in Ure*, if the Pro-
 viso whereby they are continued in Force
until they should be review’d, had not been
 inserted. His Lordship, on the other hand,
 contends that they would have remain’d
good Laws, though that Proviso had not
 been made. Good Laws, or Laws in *full*
Force; but not to be put in Execution, un-
 der Pain of Imprisonment and Fine at the
 King’s Will!

His Lordship is of Opinion, that this Act P. 29.
 “ supposes the legal ancient Constitution of
 “ the Church in the Point of Legislature;”
 that it is, “ a Recognition and Affirmance of
 “ the Legislative Power of the Church —
 “ of the *Right of the Clergy* to make Ca-
 “ nons in *ALL Matters which concern the*
 “ *Church.*” But methinks an Act, which
 subjects all former Canons, the Labours of
 the Clergy for near three Centuries past, to
 the Revival and Correction of Commis-
 sioners,

27. Hen. 8.

15.

35. Hen. 8.

16.

3, 4. E.

6. 11.

sioners, *whereof one half were to be of the Laity*, cannot with any great Propriety be call'd a Recognition of the Legislative Power of the Church, or of the Right of the Clergy to make Canons in *all Matters which concern the Church*. For if that Right was by the Constitution lodg'd in the Clergy in Convocation, the new *Expurgatory* Commission intended by this and other Acts passed about this Time, must be esteem'd a flagrant Invasion of it. The Truth is, the Body Spiritual in Convocation had for some Ages past *assum'd* a Legislative Power in Ecclesiastical Matters, *and bad grievously abused it*; in making Canons which, as the Preamble to the 25th of Hen. VIII. expresses it, "were thought not only to be
 " much prejudicial to the King's Prerogative
 " Royal, and repugnant to the Laws and
 " Statutes of this Realm, but also over-
 " much Onerous to his Highness and his
 " Subjects." And therefore the Legislature did not think it adviseable to trust *them* in the Business of Reformation.

And for the same Reason, all *future* Conventions of the Body Spiritual for the making of Canons, are by this Act laid under greater Restraints than, I think, any petty Corporation or Trading Company in the Kingdom was ever subject to with Regard to its *By-Laws*. Indeed, all Fraternities which have Power to make *By-Laws* for their better Government, have it under

this Restriction, *that their Ordinances shall not be repugnant to the Prerogative, or to the Laws and Customs of the Realm.* But the subjecting every Person making, promulging, or executing Ordinances repugnant to the Prerogative, or to the Laws of the Kingdom, to Fine and Imprisonment at the King's Will, is a Severity peculiar to the Case of *his Lordship's Spiritual Legislature.* Of the same Kind is the Proviso, that the Clergy in Convocation shall not, *under the like Penalty, attempt any Canons* (or as it hath been expounded by very great Authority, shall not so much as confer in 12. Rep. 724 Order to the making any Canons) without the Royal Licence first obtain'd. These, I say, are Instances of Caution and Severity, peculiar to the Case of *Synodical By-Laws.* Which nothing but the Experience of grievous Misbehaviour on the Part of the Clergy in Times past, join'd with an Apprehension of future Transgressions in the same Way, could have suggested.

Lest any of my Readers should take Offence at the Term *By-Laws*, when apply'd to Ecclesiastical Constitutions, I desire to explain myself. By *By-Laws* I mean Ordinances made for special Purposes, by limited Powers deriv'd from the Legislature, or the Crown; and restrain'd, in the Nature and Constitution of Things, to certain Persons and to certain Matters, beyond which they are of no Force. I think it is

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generally

C. 974.

generally agreed, and his Lordship frequently admits it, that the Power of the Convocation is confin'd to *Spiritual Matters*: But he cannot go so far as to say, that it is likewise confin'd to *Spiritual Persons*: "For" this, he says, would look as if the Laiety "had *nothing to be sav'd but their Estates*;" "nor the Clergy any thing to do *but to save themselves*." A due Regard ought to be paid to every Argument an Author of Distinction favours his Readers withal: And I would willingly do Justice to his Lordship's Reasoning in this Passage. But I am free to confess, I do not see where the Force of it lies; unless his Lordship hath an Eye to the Case of *Eternal Salvation*, and would suggest that Ecclesiastical Constitutions have a more direct Influence *that Way*, than any others. But — will his Lordship be content that the Body of the Canon Law, or even the Canons of 1603, should stand and fall by this Test? The Laiety *know* they have something to be sav'd besides their Estates: And it is fit the Clergy likewise should be told, that the Gentlemen of *England* will never part with their Temporal Rights, out of Deference to *unmeaning* Sounds. They know it is a Maxim in all free Governments, and especially in ours, *that the Subject is bound by no Laws to which he is not a Party in Person or by Representation*. This Doctrine they apprehend to be as old as the

Con-

Constitution ; and think it hath been, with great Propriety, apply'd to the Case of Synodical Ordinances, made without *their* Concurrence. “ The Convocation hath

“ Power, *say the old Books*, to appoint Fast-

“ ing Days and Holydays ; — to make

“ Constitutions, by which Persons of holy

“ Church may be bound ; *but they cannot*

“ *do any Act, which shall bind the Tem-*

“ *porality.*” “ The Convocation may make

“ Constitutions by which those of the Spi-

“ rituality shall be bound ; for this, that

“ they all, by Representation or in Person,

“ are present, *but not the Temporality.*”

And so late as in the Beginning of the

Reign of *Queen Anne*, “ In the Primitive

“ Church the Laity were present at all

“ Synods. When the Empire became

“ Christian, no Canon was made without

“ the Emperor's Consent. *The Emperor's*

“ *Consent included that of the People, he*

“ *having in himself the whole Legislative*

“ *Power, which our Kings have not :* There-

“ fore if the King and Clergy make a Ca-

“ non, it binds the Clergy in *re Ecclesia-*

“ *stica*, but it does not bind Laymen. *They*

“ *are not represented in Convocation ; their*

“ *Consent is neither ask'd nor given.*”

My Lord Chief Justice *Vaughan*, indeed,

did, in the Places cited by his Lordship, ad-

vance a contrary Doctrine. But his Lord-

ship will permit me to say, that the Do-

ctrine under Consideration, is too impor-

tant

20. Hen. 6.

13. 21.

E. 4. 45.

Bro. Ordinary, 1.

12. Rep.

73.

Salk. 412.

672.

2. Vent. 44.

Vau. 327.

328.

Vau. 327.

tant to be rested on the *single Opinion* of any Man whatever. Besides, let us examine the general Principle laid down by *Vaughan*, and cited, I think, more than once by his Lordship, with high Approbation. It is, that " If by a *lawful* Canon a Marriage be declar'd to be against God's Law, *we must admit it to be so*; for a lawful Canon is the Law of the Kingdom as well as an Act of Parliament." The ancient Canons of our Church prohibited Marriage within the seventh Degree of Consanguinity, and the Prohibition was by subsequent Canons confin'd to the Fourth.

Ibid. 328.

Had the Canons of 1603, prohibited Marriage within the same Degrees, would *they* have been binding in the Case? I think they would not: I believe no body conceives they would. And if so; how can it be said that a Court of Law *must* admit a Marriage to be against God's Law, which a lawful Canon hath declar'd to be so? Unless by a *lawful* Canon, no more be meant than a Canon agreeable in *all Respects* to Law. Which is barely saying, that What is Law is Law, and must be admitted to be so. I would likewise submit it to his Lordship's Consideration, whether the Doctrine advanced by the Chief Justice in the next Page, in Support of his general Principle, doth not, while it seems to advance the Authority of *Synodical* Constitutions,

tutions, derogate from the original divine Authority of the holy Scriptures. It is, that " Any Marriage unlawful by the holy " Scriptures, is declar'd here to be against " God's Law judicially, NO OTHERWISE " *than* because by the Law of the Land " the Scripture it self is declar'd and approv'd to be the Word of God. For " Scripture cannot judge it self to be Scripture without some Judicature: THERE- " FORE, by the sixth Canon *Anno* 1552, " the Authority of the Old Testament is " declar'd. And in the Convocation of " 1562, the Canonical and Apochryphal " Books were enumerated, and the one " receiv'd, the other rejected." I have his Lordship's Sentiments with me when I say, that the holy Scriptures would have been a Law to all who believe them to be the Word of God, though no human Authority had declar'd or approv'd them to be so. They were so, when every Power on Earth declar'd otherwise.

But whether the Canons bind the Laiety in *re Ecclesiastica* or no, is a Question, comparatively speaking, of very small Importance, till the full Extent of Ecclesiastical Power, with Regard to the *Subject Matter* of Synodical Constitutions, is adjusted between the Author of the *Codex* and his Readers. This is a Point of great and general Concernment; which I think merits the Attention of every Gentleman in *Eng- land.*

land. It is, Whether the Canons of the Church shall controul Common and Statute Law? Whether the *Act of Submission* shall continue to be a real effectual Restraint upon the Clergy in Convocation, or a *dead Letter*? In short, Whether the Clergy may hope to be once more the Masters of this Kingdom? The *Act of Submission* provides, that no Canons shall be made or put in Execution, which shall be repugnant to the Prerogative, or to the Customs, Laws and Statutes of the Realm. But — we have already observ'd that the *Laws in Being of all Kinds*, and the Amendment of them as far as concerns our Ecclesiastical Constitution, are in general Terms suppos'd to be the Subject Matter of *Synodical Enquiries and Debates*. Some special Cases in which the Laws are supposed to require Amendment, and in which Work his Lordship seems to depend on the Aid of his Spiritual Legislature, are scatter'd up and down in the *Codex*. That which I have already mention'd relating to Grants made by Bishops and other Ordinaries, in Prejudice to their Successors, is one: But there is a great Number of them behind; namely, the Citations from the *Reformatio Legum, &c.*

P. 116.

My Readers will be pleased to remember that those Citations are inserted in the *Codex*
 “ as CANDIDATES for a Place in our
 “ Constitution, IN CASE the Convoca-
 “ tion

P. 14.

"tion shall think them deserving." Whence we may reasonably infer, that in his Lordship's Judgment they deserve a Place in our Constitution: Else why are they recommended at all? And if they are not proper Subjects for Synodical Deliberations, why are they recommended to the Wisdom of the Convocation? Two of these Candidates have been already consider'd in Point of *Expediency*; and I shall add nothing to what I have said of them *in that View*. It is sufficient to observe in this Place, that *Both of them are derogatory to the King's Prerogative, and repugnant to the known Laws of the Land*: One to an establish'd Principle of Common Law; the Other to a positive Act of Parliament. And yet are they Both, in Defiance of the *Act of Submission*, recommended and submitted to the Wisdom of the Convocation, as Candidates for a Place in our Constitution.

I do not intend, nor is it necessary to my present Purpose, to enter into a particular Examination of all the other *Candidates*, his Lordship hath in like Manner recommended to *his Spiritual Legislature*. For the Ease of my Readers, who may be willing to satisfy their Curiosity concerning them, the Folios of the *Codex* where they occur, are referr'd to in the Margin. Some of them seem indeed to merit the Consideration of the Legislature, as tending to the Improvement of our Constitution, provided

P. 61. 89.

C. II. 158.
507, 508.
536. 700.
810. 840.
1018. 1030.
1128.

vided they were *properly* introduc'd into it. But as they are all of them introductive of a new Law, in the several Cases to which they relate: and as some of them tend to the Diminution of the Prerogative on its present Foot, while others are directly contrary to Statute Law; the supposing that they may be ingrafted into our Law, *by the Aid of the Convocation*, is not at all consistent with the Deference we all owe to the Wisdom of our excellent Constitution, and particularly to the *Act of Submission*. I think, however, a few of these Candidates may deserve a more particular Consideration; as they serve to shew us some of the Changes our Constitution is likely to undergo, if his Lordship's Scheme for Reformation should ever take place: And at the same Time let us see, how far, in his Lordship's Judgment, the Power of the Convocation doth, or ought to extend.

The First which falls in my Way under this Head, (for I shall consider them in the Order they lye in the *Codex*,) relates to a Case of very general and very tender Concern, *the Disposal of our Children in Marriage*. The Canons of 1603 provide in general Terms, that no Children under the Age of Twenty-one, shall marry without the Consent of their Parents or Guardians. The *Reformatio Legum* went farther, and declar'd such Marriages void. But, saith his Lordship, " inasmuch as *Parents* and
" *Guardians*

" Guardians may sometimes deal hardly
 " by Children *in this Particular*, the
 " *Reformatio Legum* goes on thus; *Quod*
 " *si Parentes vel Tutores in providendis*
 " *Nuptiarum conditionibus Nimium Cessa-*
 " *verint, aut in illis proponendis Nimium*
 " *duri et acerbi extiterint, ad Magistra-*
 " *tum Ecclesiasticum confugiatur: a quo,*
 " *partes eorum in hujusmodi difficultati-*
 " *bus agi volumus, et ejus Æquitate totam*
 " *causam transigi.*" What an *unrighteous*
 Power would the Ecclesiastical Judge ac-
 quire, if this single Candidate of his Lord-
 ship's should ever gain a Place in our Con-
 stitution! Parents *may*, as his Lordship ob-
 serves, *sometimes* deal hardly by their Chil-
 dren in this Particular. They may be too
 remiss in providing suitable Matches for
 them, or over rigorous in adjusting Prelimi-
 naries: But is it therefore reasonable, that
 all Parents should be stripp'd at once of their
 Parental *Authority*? That the Ecclesiastical
 Judge shall, *without the Bowels of a Pa-*
rent, intermeddle, and judge definitively in
 an Affair, in which the Honour and Quiet
 of Families, and all the future Comfort of
 Parents *and Children too*, are so nearly
 concern'd! His Lordship supposes a Case,
 where Parents have *sometimes* failed in their
 Duty towards Children. But as the Case
 of unreasonable Expectations and undutiful
 Behaviour, on the Part of Children, is in-
 finitely more frequent, and is daily the
 Source

Source of some of the most preffing Calamities of Life; methinks a wise Man should not hastily give into a Scheme, which hath a manifest Tendency to render *a Father's Care* insignificant, in the most important Article of Life, that of a suitable or unsuitable Marriage.

The next of his Lordship's Candidates, which seems to merit our Attention, appears to me to be no more nor less than *a Scheme for a Land Tax, to be passed in Convocation, for the better Maintenance of the Clergy*, especially of such as serve in Cities and Towns. His Lordship having taken Notice of the universal Substraction of *Personal Tythes*, informs his Readers, that a Remedy for this Evil

C. Vol. 2.
700.

was propos'd in the Year 1562, viz.
 " Either by rating of some Certainty upon
 " every Person, by a Contribution or otherwise,
 " wise, to a reasonable Sum; or else to appoint a Rate according to the Rent of
 " their Houses, as it is in *London*, i. e. for
 " every Pound Rent to the Parson or Vicar 2 s. 9 d. And this, saith his Lordship, is no more than was intended to be
 " made a Law in the Reign of *Edward VI.*
 " as appears by the Chapter in the *Reformatio Legum*, entitled, *Solvendas esse Decimas personales juxta Consuetudinem Urbis London* — *Pro Domibus nimirum atque Terris quibus utuntur, & illarum ratione Decimas Prædiales non*
 " solvuntur

solvant ; Quolibet Anno dabunt annuæ Pensionis decimam Partem.

It may not be improper to inform those of my Readers, who have not made these Matters their Study, that by *personal Tythes* the Clergy meant, a full tenth Part of the clear Gains of Merchandize, Husbandry, Manufactures, and of every other lawful Occupation. *The most grievous Tax upon Industry, the Lust of Power ever suggested !*

In the first Ages of the Church, the Ministers of the Gospel subsisted upon a certain Portion of the voluntary Contributions of the People. I say a *certain Portion* ; because those Contributions were ordinarily apply'd to the Maintenance of the Ministers, the Relief of the Poor, and the Support of the publick Buildings of the Church. And as the Ministers of the Gospel contented themselves with a certain Portion of the common Stock ; so the Administration of it was, in the *Apostolick Age*, esteemed inconsistent with the peculiar Duties of their Function : And therefore certain Lay Officers, called Deacons, were appointed by the Church to that Work. Act 6.

If this Apostolical Rule had been religiously observed in succeeding Ages, the Misapplication of the Church's Stock, and infinite Mischiefs which arose from it, might have been prevented. But when Christianity, from a State of Persecution, became the reigning Religion of the Empire, and the

Treatise of
Beneficiary
Matters, f. 8.
Decretum
Causa, 12.
cap. 26, to
31.

Bede, L. 1.
c. 27.

the Church was enabled to accept of *Donations of real Estates*, the Bishops took on *themselves* the Administration; and from Administrators or Trustees became, in Process of Time, *Lords Proprietors*, of them. The Ecclesiastical Revenues however continued, for some Ages, to be divided into four (not equal, but proportional) Parts: Where of one went to the Bishop, a second to the Inferior Clergy, *who were considered* as his *Curates*, a third to the Poor, and a fourth to the Repairs of the Church, and other publick Buildings. That this Practice continued at least, to the Beginning of the seventh Century, appears, from an Epistle of *Gregory the Great* to *Austin* the Monk upon this Head; “ *Mos autem sedis Apostolicæ est, Ordinatis Episcopis præcepta tradere, ut in omni Stipendio quod accedit, Quatuor debeant fieri portiones, una videlicet Episcopo et familiæ propter hospitalitatem atq; susceptionem: alia Clero, tertia Pauperibus, quarta Ecclesiis reparandis.*”

The Bishop of *Rome* had not then assumed the Title of *Universal Bishop* and *Vicar of Jesus Christ*. That exorbitant Dignity was, as it is generally agreed, confer'd on that See in the Time of *Boniface*, one of *Gregory's* Successors. Among the many Mischiefs which this great Revolution in the Christian Church gave Rise to, one, and that not the least, seems to be the Appropriation of the Lands of the

the Church of *Rome*, then commonly call'd
St. Peter's Patrimony, to the Use of the
 Bishop of the See. Other Bishops soon
 follow'd the Example, and engross'd to
 themselves the Patrimony of the Churches
 under their Care; whereby the inferior
 Clergy and Poor became in a manner de-
 pendent on the Bishop for their daily Bread.
 This made it necessary to find out some
 other Fund for the Maintenance of the Poor
 and Clergy; and with that View, Tithes
 began, about the eighth Century, to be in-
 sisted on as the divine Right of the Church:
 Not however in the Sense in which the
 Corruption, Ignorance, and Superstition of
 succeeding Ages have used that Word; but
 as the Church of *England*, in Conformity
 to the Sense of the Apostolick Age, under-
 stands it, *the Body or Congregation of the* Art. 19.
Faithful. Accordingly, Tythes in the ori-
 ginal Institution of them, and for a con-
 siderable Time afterwards, were not con-
 sider'd as a Provision for the Clergy alone,
 but as *the Estate of the Church*; out of
 which the Poor and the Places for religious
 Worship were to be provided for. This
 might be made very clear from the History
 of the Church, as well as from the Body
 of the Canon Law: But I confine myself
 to a few plain Authorities nearer Home;
Et de decimis, Rex et Sapientes ejus Inter Leges
statuerunt et decreverunt, prout justum Ethelredi.
est, quod una Pars Decimarum illarum Wilkins,
 " quæ f. 113.
 Ann. 1014.

Canones Æl-
frici.
Spelm. Con.
Vol. 1.
578.

Seld. of
Tythes, 4to.
f. 196.
1. Spelm.
Con. 259.
* Timentibus
Spelm.
Circiter Ann.
750.

“ *quæ ad Ecclesiam pertinent detur ad*
 “ *Restorationem Ecclesiæ, et Secunda pars*
 “ *Dei Ministris, tertia Pauperibus Dei &*
 “ *inopibus Servilibus.* Again, “ *Sancti*
 “ *etiam patres statuerunt, ut Ecclesiæ Dei*
 “ *decimas suas quique conferant; tradanturque*
 “ *eæ Sacerdoti, qui easdem in tres distri-*
 “ *buat Portiones, unam ad Ecclesiæ Repa-*
 “ *rationem, alteram Pauperibus erogan-*
 “ *dam, tertiam vero Ministris Dei qui*
 “ *Ecclesiam ibi curant.*” ’Tis plain from
 these, and other Authorities I shall pre-
 sently cite, that Tythes were originally
 receiv’d by the Clergy *under a Trust*, to be
 divided as the Canons direct. And lest
 the Trustees would be tempted to apply
 too large a Share of the Trust-Estate to
 their own Use, the Wisdom of those Ages
 provided, that the Distribution should be
 made in a publick Manner before Witnes-
 ses. To this Purpose, there is a Canon in
 a Collection of ancient *English* Canons
 ascrib’d to Egbert, Archbishop of York; *Ips*
 “ *Sacerdotes a populis suscipiant Decimas*
 “ *& Nomina eorum quicunque dederint*
 “ *Scripta habeant, et Secundum Authori-*
 “ *tatem Canonicam coram Testibus * divi-*
 “ *dant; et ad Ornamentum Ecclesiæ primam*
 “ *eligant partem, secundam autem ad usum*
 “ *Pauperum et Peregrinorum per eorum*
 “ *Manus misericorditer cum omni Humi-*
 “ *litate dispensent, tertiam vero sibi*
 “ *ipsis Sacerdotes reservent.*” There is the
 like

like Provision for the Division of Tythes, *Coram Testibus*, in a Volume of Canons, call'd *Statuta Synodorum*; which Mr. Sel- Seld. 210.
212. den supposes to have been collected in King *Athelstan's* Time. By the way, the Gentlemen who, on all Occasions, shew a Disposition to treat *Impropriations*, *Modus's*, and *Exemptions* from Tythes, as Inroachments on the Rights of the Church, do not seem to consider, that the Claim of the Church, in the modern Sense of the Word, is a manifest Deviation from the original Institution; which intitled the Clergy to no more than an equitable Dividend of the Tythes. But the Clergy being intrusted with the Distribution, though under the Caution I have mention'd, quickly engross'd the Whole to themselves; subject only to the insignificant Burden of the Repairs of the Chancel: Which easily accounts for the extraordinary Zeal which hath discover'd itself in all Ages on this Head.

At first indeed, because the *Mosaical* Law, on which the divine Right to Tythes was grounded, gave the *Jewish* Priesthood *prædial* and *mixt* Tythes only, the Clergy seem to have carry'd their Demands no farther than to those Sorts of Tythes. But the first Point being once gain'd, the Divine Right was soon extended; even to personal Tythes; the full Tenth of every Man's lawful Gains, whatever his Occupation be. Nay, the Canonists were not asham'd to say, that common Beg-
M gars

Father
Paul's Treas-
ure of Bene-
ficiary Mat-
ters.

Degge, 351.
Linwood, de
Decimis
Quoniam
propter v.
juste acqui-
sitis.

gars were oblig'd in Conscience to pay Tythes of their Alms, and even common Whores of the *Earnings of Fornication*. It is true, the Church was a little tender in the Case of common Prostitutes, *Ne videatur Ecclesia personas ipsarum approbare*. But a Temper was found out which reconcil'd her to this Sort of *Church Dues*. If the Offenders repented of their past Crimes, their Tythes and Offerings were accepted; because they were *then* consider'd as *new Creatures*, or, in the Language of the Canonists, *Pœnitens incipit esse quod prius non fuit*. But whether they repented or continued in Sin, the Consent of the *Diocesan* was War-rant sufficient for taking their Money. The Parson, under either of these Limitations, might, without Scandal, go *Snacks* in the Wages of Prostitution!

'Tis not to be wonder'd at that the Clergy should insist on the Payment of Tythes, to the utmost Rigour of the Canon Law; or that *it* should abound with Provisions, express'd in very strong and general Terms, to that Purpose. The Canon his Lordship hath been pleas'd to cite, is very full and clear for the Payment of *personal Tythes*. But it were to be wish'd his Lordship had shewn, that this Canon had been submitted to, or receiv'd as a Law universally binding: For when we hear learned Men complain of the *universal Substraction of personal Tythes*, and see a Remedy offer'd, which

which must affect *all Parts of the Kingdom*, (as the Expedient his Lordship hath recommended certainly doth) one would reasonably conclude, *that those Tythes were once universally due*; and that the Church hath been, by a general Combination, defrauded of them. But the Matter is quite otherwise: These Tythes were never due in *England of Common Right*; never otherwise than by Special Custom, in some particular Parishes; and are lost and gone for ever, where an *immemorial, uninterrupted Custom* for the Payment of them, cannot be prov'd. And therefore the Scheme his Lordship adopts and recommends, ought not to be entertain'd under the Notion of a Compensation to the Clergy for *personal Tythes*; to which they were never intitl'd otherwise than by *Local Customs*; but must be consider'd in a quite different Light, namely, *as a new Tax upon the Subject*: A Tax, equal at least to the ordinary Produce of a Land Tax upon Houses at 4 s. in the Pound. And what is still more extraordinary, *the Scheme is not offer'd to the Consideration of Parliament, but of the*

CONVOCA TION.

But this is not the only Instance in which his Lordship discovers an Inclination to be taxing the Gentlemen of *England*, by *Virtue of the Ecclesiastical Authority*, in *Favour of the Parochial Clergy*. There is another Expedient, which seems to be cal-

C. 756,
7, 8.

culcated for the Benefit of those of the Clergy, who, generally speaking, are not likely to profit by the former: *It is the Augmentation of Vicarages by the single Authority of the Ordinary.* His Lordship having laid it down (how justly I will not now determine) as a Principle agreed on all Hands, that the Ordinary hath a Power to compel *Spiritual Impropriators* to augment Vicarages out of their respective Rectories, *in such Manner as he shall see convenient*; admits, that nothing is more peremptorily deliver'd throughout the Books of Common Law, than that the Ordinary hath no such Power over *Lay Impropriators*. His Lordship, I say, admits the Distinction between *Spiritual* and *Lay Impropriators* to be just *in Point of Law*; but argues that no such Distinction ought to *take place in Reason*: *And that all Impropriators, whether Lay or Spiritual, ought to be equally under the Power of the Ordinary in that Respect.* My Readers will be pleas'd to remember, that the Exceptions his Lordship is from Time to Time taking to the Judgments of *Westminster-Hall*, are, according to his own Account of them, "honest Attempts after Truth, and may help Things into a right Course by Degrees." So that this Scheme, for subjecting the Inheritance of every Lay Impropriator in the Kingdom, to the Power of the Ordinary; *to be tax'd at His Pleasure, towards the Maintenance of the Vicar*; ought

ought to be considered as one of his Lordship's *Candidates for a Place in our Constitution*; though it is not offer'd to our Consideration under that Character.

I have now gone through the *Codex* as far as my present Views lead me. But I doubt I must not conclude, without making some Apology for myself, and this Undertaking. Perhaps most of my Readers may think I stand in Need of one: And some, I fear, have already concluded my Case will not admit of any. Those who only consider the eminent Station of the Reverend and Learned Prelate who is concern'd in these Papers, will be ready to charge me with high Presumption: While others, who reflect on his Political Principles and Conduct, may be apt to say, his Mistakes, whether real or supposed, in other Matters, ought not to have been exposed at all, or not at this Juncture. These Considerations were present to me when I set about this Work; and I am free to confess, they were no manner of Discouragement to me in the Prosecution of it. It would be a high Reflection on his Lordship, to suppose, he wishes to see the Distinctions of Rank and Dignity, or even any other *more personal* Consideration, take Place, in Questions of Truth and Error; especially in Questions, where the Honour of our Constitution, the Prerogatives of the Crown, and the Rights of the Legislature, are, or but seem to be, concern'd.

Amicus

Amicus Socrates, Amicus Plato, sed magis amica Veritas.

Great Deference is certainly due to Persons of high Rank in the Community ; and Characters of eminent Usefulness will command the Esteem of Mankind. But no Man who is a Lover of Truth and Liberty, will care to have it said of him, that, in any Instance, he discountenanc'd a Freedom of Enquiry and Debate, though *his own Writings* might be the Subject of that Enquiry. Upon this Ground, I think myself secure of his Lordship's Indulgence. And as to those who may have been led by the Authority of others, to esteem the *Codex as a Treasure of useful Knowledge ; a Work for which the Church and Clergy of this Nation stand deeply indebted to his Lordship ; a Work eminently serviceable to the Church of England, and which must be ever considered as a STANDARD by all competent Judges ;* they will not be displeas'd to be put upon examining a Performance so highly applauded ; and of judging, *for themselves*, whether it doth indeed merit the *Incense* which hath been offered to it : And even those who have been pleas'd to recommend it to the Study of the Clergy, and of the Youth in our Universities, have at least an Opportunity of declaring, whether they avow *all* the Principles of it, or are willing to be made accountable for them.

Dr. Grey's
Preface.
Bishop of
Lichfield's
Charge.

The Bulk of my Readers will, at least, pardon the Trouble I have been giving them, when

when they reflect that the leading Principles
 of the *Codex*, and which serve as a Founda-
 tion to his Lordship's Scheme of Church
 Power, are no other than these; " That
 " the Office of Consecration, so often con-
 " firm'd by Parliament, warrants every Bi-
 " shop to claim Authority *by the Word of God*, P. 18.
 " for the Exercise of *all manner of* Spiritual
 " Discipline, within his Diocese": " That the
 " Correction of Vice, and of *other Defects* P. 31.
 " *and Irregularities of a Spiritual Nature*,"
 is the proper Province of the Clergy; and
 " that Temporal Penalties in such Cases, are
 " then, and *then only*, rendered truly bene-
 " ficial to Religion, when they are provi-
 " ded as a further Terror and Punishment
 " *to be call'd in*, AS OFT as the Censures
 " of the Church are disobey'd": That it
 were to be wish'd the Church might, in the C. 1089.
 Exercise of her Discipline, be at Liberty to
 proceed by the *wholesome Method of Canonical*
Purgation: That " the Ecclesiastical Courts
 " might not be *pester'd with Prohibitions*" C. 1066.
 from the Courts of Common Law, nor have
 her Proceedings staid, or her Censures ren- C. 1117.
 der'd ineffectual, " by *Pardons from the*
 " *Crown, or by ACTS OF GRACE*." That as P. 21. C.
 in all Ecclesiastical Causes, the Clergy ought 1082.
 to be the *sole ultimate* Judges on Appeals; so
 the *whole Prudential* Administration, under P. 22.
 the King " of *all Affairs which concern Spi-*
 " *ritual Persons or Spiritual Things*, ought
 " to be lodg'd in them." That with Regard P. 30. 31.
 to making Laws concerning Religion, or
 the

the Interest of the Church, and
“ themselves may be press’d to
“ what Assistance of that Kind
“ Hands in Need of,” and who
“ Goods” for promoting the
Interest of the Church.

C. To this End we have a Legislature
of Persons Spiritual, namely,
P. 11. And that therefore, “ an Engage-
ment, the Improvement of our Ecclesiastical
Institution, and for the Amendment of
Laws in being, of all Kinds, as far as con-
the Church, her Powers, or Privileges
“ to be reserv’d till those Matters
“ made the Subject of Synodical
“ ries and Debates.”

These Principles, admitted in
Latitude, and in their necessary Con-
ces, would, I fear, soon introduce
ed State of Things, which
thought he saw coming on, when
some Discipline of Canonical
the Oath *Ex Officio*, was
our Ecclesiastical Constitution.

Jan. 1609.

See his Let-
ters. Pref.
p. 51.

“ *timeo*, lays that honest
“ *coporum Magna illa pars*
“ *prosus mihi suspecta est*
“ *piatum in Anglia videtur*
“ *rum propediem Equidem*
“ *Verum omnia divina*

June 11. 1735.

F I N I S